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United Nations

Committee on Economic, Social and Cultural Rights

Report on the forty-second and forty-third sessions (4-22 May 2009, 2-20 November 2009)

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United Nations • New York and Geneva, 2010

Note

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Abbreviations

DAW	Division for the Advancement of Women
FAO	Food and Agriculture Organization of the United Nations
ILO	International Labour Organization
IMF	International Monetary Fund
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
WHO	World Health Organization
WIPO	World Intellectual Property Organization

Chapter I

Draft decision recommended for adoption by the Economic and Social Council

Rationale

1. While noting with appreciation that the increased workload of the Committee was, inter alia, a result of the improved reporting rate by States parties, the Committee expressed concern at the persisting backlog of reports awaiting consideration (an average of approximately 25 reports). In light of the fact that the Committee only meets twice a year, it has felt severely constrained in its efforts to reduce this backlog and consider the periodic reports of States parties in a timely manner and without undue delay.

2. After being advised of the related financial implications, the Committee decided to request the Economic and Social Council in 2009 to approve one additional session per year during the period 2010-2011. This request was however, not considered during the substantive session of the Economic and Social Council in July 2009. As a result, the Committee reiterates its urgent request for additional sessions with a change in the time period to 2011-2012.

3. In addition to the severe delays now caused by the aforementioned backlog in consideration, it must also be noted that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly on 10 December 2008 has now been opened for signature and ratification as of 24 September 2009. With the requirement of 10 ratifications for its entry into force, it is foreseeable that it might enter into force in the next two years. This will create a substantial additional workload for the Committee, who will have to manage the consideration of individual petitions within the frame of two sessions per year in addition to its consideration of State party reports.

Draft decision

4. The Economic and Social Council, concerned that existing meeting arrangements for the Committee on Economic, Social and Cultural Rights no longer permit it to fully discharge its responsibilities under the International Covenant on Economic, Social and Cultural Rights and Council resolution 1985/17 in an efficient and timely manner, and noting that the present backlog in consideration of State party reports could be effectively dealt with through additional sessions, approves the convening of an additional session of the Committee, followed by pre-sessional Working Groups of one week's duration, in Geneva, in both 2011 and 2012.

Chapter II

Organizational and other matters

A. States parties to the Covenant

5. As of 20 November 2009, the closing date of the forty-third session of the Committee on Economic, Social and Cultural Rights, with the ratification of Bahamas, 160 States were parties to the International Covenant on Economic, Social and Cultural Rights. The Covenant was adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. It entered into force on 3 January 1976 in accordance with the provisions of its article 27.

B. Sessions and agenda

6. The Committee, at its twelfth session, requested the Economic and Social Council to authorize the holding of two annual sessions of the Committee, in May and November, each of three weeks' duration, in addition to a pre-sessional working group of five members to meet for five days immediately after each session to prepare the list of issues for consideration at the subsequent session. The Council, in its resolution 1995/39 of 25 July 1995, endorsed the recommendation of the Committee.

7. In 2009, the Committee held its forty-second session from 4 to 22 May, and its forty-third session from 2 to 20 November. Both sessions were held at the United Nations Office at Geneva. The agenda for each session is displayed in annex II to the present report. A list of documents for each session is displayed in annex IX to the present report.

8. An account of the Committee's deliberations at its forty-second and forty-third sessions is contained in the relevant summary records (E/C.12/2009/SR.1-27 and E/C.12/2009/SR.29-44, respectively).

C. Membership and attendance

9. Two new members of the Committee were welcomed at the start of the forty-second session: Mr. Zdzislaw Kedzia and Mr. Nicolaas Jan Schrijver. Two outgoing members were thanked for their dedication and effort: Mr. Andrzej Rzeplinski and Ms. Barbara Wilson.

10. All members of the Committee attended the forty-second session (see list of members, annex II to the present report). All members of the Committee attended the forty-third session (see list of members, annex II to the present report) except Mr. Yuri Kolosov who has resigned from the Committee effective 1 August 2009.

11. An election was held to fill the casual vacancy as per rule 12 of the Provisional Rules of Procedure of the Committee on Economic, Social and Cultural Rights (E.C.12/1990/4/Rev.1). On 15 December 2009, under item 1, the Economic and Social Council elected Mr. Aslan Khuseinovich Abashidze (Russian Federation) by acclamation for a term beginning on 15 December 2009 and expiring on 31 December 2010 to replace Mr. Yuri Kolosov.

12. The newly elected and re-elected members of the Committee, at its first meeting of its forty-second session on 4 May 2009, made a solemn declaration in open meeting, in accordance with rule 13 of the Committee's rules of procedure.

13. The following specialized agencies and United Nations organs and departments were invited to be represented by observers at the forty-second and forty-third sessions: DAW, FAO, ILO, IMF, UNAIDS, UNCTAD, UNDP, UNEP, UNESCO, UNFPA, UN-HABITAT, UNHCR, UNICEF, UNIFEM, WHO, WIPO and the World Bank.

14. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers:

At the forty-second session:

General consultative status:	Amnesty International (AI), Centre Europe Tiers-Monde (CETIM), Comité national d'action pour les droits de l'enfant et de la Femme (CADEF), FIAN International (Foodfirst Information and Action Network), International Federation of Social Workers (IFSW), International Organization for the Right to Education and Freedom of Education (OIDEL), International Club for Peace Research (ICPR), International Service for Human Rights (ISHR), Latin American Committee For The Defence of Women's Rights (CLADEM), Lawyers Rights Watch — Canada, Minority Rights Group International (MRG), National Association of Community Legal Centres (NACLC), World Organization Against Torture

At the forty-third session:

General consultative status:	Franciscans International (FI), Good Neighbors International (GNI)
Special consultative status:	Instituto Internazionale Maria Ausiliatrice (IIMA), Geneva for Human Rights (GHR), International Federation of Human Rights Leagues (FIDH), International Commission of Jurists (ICJ), International Organization for the Right to Education And Freedom Of Education (OIDEL), Women's International League for Peace and Freedom (WILPF), International Federation for Family Development (IFFD), International Service for Human Rights (ISHR), Human Rights Advocates, Inc. (HRA), Kurdistan Reconstruction and Development Society, Vivat International, Minbyun — Lawyers for A Democratic Society, Lutheran World Federation (LWF), European Region of The International Lesbian And Gay Association (ILGA-EUROPE),

Federation for Women And Family Planning, Amnesty International (AI), Company of The Daughters Of Charity Of St. Vincent De Paul, Asian Forum for Human Rights And Development (FORUM-ASIA), Pax Romana (International Catholic Movement for Intellectual And Cultural Affairs And International Movement of Catholic Students)

Roster: Vides International, Kurdish Committee for Human Rights, Ongasn, Women Cultural Social Society, Foodfirst Information and Action Network — FIAN, Sarangbang Group for Human Rights, Hope International, Korean Moral Workers' Union

15. The following other national and international non-governmental organizations and coalitions of national non-governmental organizations were represented by observers at either or both of the forty-second and forty-third sessions: 3D-Human Rights-Equitable Economy, Bridges Across Borders Southeast Asia (BABSEA), Cambodia Risk Community, Centre on Human Rights and Evictions (COHRE), Engender Scotland and United Kingdom, Federation of Social and Educational Organizations (FASE), Fundacion Intercultural "WAYUNKA", Housing Rights Task Force (HRTF), Indigenous Rights Active Member (IRAM) of Indigenous Community Support Organization (ICSO), International Research Centre on Social Minorities (IRCSM), Kingsford Legal Centre, Movimento Nacional de Meninos e Meninas de Rua, Northern Ireland Council for Ethnic Minorities (NICEM), Scottish Commission for Mental Health (SAMH), Good Neighbors International (GNI), Istituto Internazionale Maria Ausiliatrice (IIMA).

D. Pre-sessional working group

16. The Economic and Social Council, in its resolution 1988/4 of 24 May 1988, authorized the establishment of a pre-sessional working group composed of five members to be appointed by the Chairperson to meet for up to one week prior to each session. By decision 1990/252 of 25 May 1990, the Council authorized the meetings of the working group to be held one to three months prior to a session of the Committee.

17. The Chairperson of the Committee, in consultation with the members of the Bureau, designated the following individuals as members of the pre-sessional working group to meet:

Prior to the forty-second session:

Ms. Virginia Bonoan-Dandan

Mr. Azzouz Kerdoun

Mr. Alvaro Tirado Mejia

Mr. Zdzislaw Kedzia

Mr. Eibe Riedel

Prior to the forty-third session:

Mr. Zdzislaw Kedzia

Mr. Jaime Marchan-Romero

Mr. Ariranga Pillay

Mr. Philippe Texier

Mr. Daode Zhan

18. The pre-sessional working group held its meetings at the United Nations Office at Geneva from 25 to 29 May 2009 and from 23 to 26 November 2009. All designated members of the working group attended the meetings. The working group identified issues that might most usefully be discussed with the representatives of the reporting States and lists of such questions were transmitted to the permanent missions of the States concerned. The pre-sessional working group to precede the forty-fifth session will hold its meetings from 25 to 28 May 2010, and for the forty-sixth session from 22 to 26 November 2010.

E. Election of officers

19. In accordance with rule 14 of the Committee's rules of procedure, the Committee, at its first meeting of its forty-second session on 4 May 2009, elected the members of its Bureau, as follows:

Chairperson:	Mr. Jaime Marchan-Romero
Vice-Chairpersons:	Mr. Mohammed Ezzeldin Abdel-Moneim
	Ms. Maria Virginia Bras Gomes
	Mr. Waleed Sadi
Rapporteur:	Mr. Zdzislaw Kedzia

F. Organization of work

Forty-second session

20. The Committee considered its organization of work at its first meeting on 4 May 2009. In connection with this item, the Committee had before it the following documents:

(a) Provisional agenda and draft programme of work for the forty-second session, prepared by the Secretary-General in consultation with the Chairperson of the Committee (E/C.12/42/1);

(b) Reports of the Committee on the work of its previous sessions: first (E/1987/28-E/C.12/1987/5), second (E/1988/14-E/C.12/1988/4), third (E/1989/22-E/C.12/1989/5), fourth (E/1990/23-E/C.12/1990/3 and Corr.1), fifth (E/1991/23-E/C.12/1990/8 and Corr.1), sixth (E/1992/23-E/C.12/1991/4 and Add.1), seventh (E/1993/22-E/C.12/1992/2), eighth and ninth (E/1994/23-E/C.12/1993/19), tenth and eleventh (E/1995/22-E/C.12/1994/20 and Corr.1), twelfth and thirteenth (E/1996/22-E/C.12/1995/18), fourteenth and fifteenth (E/1997/22-E/C.12/1996/6), sixteenth and seventeenth (E/1998/22-E/C.12/1997/10), eighteenth and nineteenth (E/1999/22-E/C.12/1998/26), twentieth and twenty-first (E/2000/22-E/C.12/1999/11 and Corr.1), twenty-second, twenty-third and twenty-fourth (E/2001/22-E/C.12/2000/21), twenty-fifth, twenty-sixth and twenty-seventh (E/2002/22-E/C.12/2001/17), twenty-eighth and twenty-ninth (E/2003/22-E/C.12/2002/13), thirtieth and thirty-first (E/2004/22-E/C.12/2003/14), thirty-second and thirty-third (E/2005/22-E/C.12/2004/9), thirty-fourth and thirty-fifth (E/2006/22-E/C.12/2005/5), thirty-sixth and thirty-seventh (E/2007/22-E/C.12/2006/11), thirty-eighth and thirty-ninth (E/2008/22-E/C.12/2007/3) and fortieth and forty-first (E/2009/22-E/C.12/2008/3).

21. In accordance with rule 8 of its rules of procedure, the Committee, at the same meeting, considered the provisional agenda and draft programme of work for its forty-second session and approved them, as amended during consideration.

Forty-third session

22. The Committee considered its organization of work at its 29th meeting on 2 November 2009. In connection with this item, the Committee had before it the following documents:

(a) Provisional agenda and draft programme of work for the forty-third session, prepared by the Secretary-General in consultation with the Chairperson of the Committee (E/C.12/43/1);

(b) Reports of the Committee on the work of its previous sessions (see paragraph 12 (b) above).

23. In accordance with rule 8 of its rules of procedure, the Committee, at the same meeting, considered the provisional agenda and draft programme of work for its forty-third session and approved them, as amended during consideration.

G. Next sessions

24. In accordance with the established schedule, the forty-fourth and forty-fifth sessions will take place at the United Nations Office at Geneva from 3 to 20 May 2010 and from 1 to 19 November 2010, respectively.

H. States parties' reports scheduled for consideration by the Committee at its upcoming sessions

25. In accordance with rule 61, paragraph 2, of the Committee's rules of procedure, the reports submitted by States parties under article 16 of the Covenant are scheduled for consideration in the order in which they have been received by the Secretary-General. The Committee received as at 20 November 2009, closing date of the forty-third session, the following reports, which it decided to consider at its forty-fourth and forty-fifth sessions in 2010:

Forty-fourth session (3-21 May 2010)		
Afghanistan	Second-fourth	E/C.12/AFG/2-4
Algeria	Third-fourth	E/C.12/DZA/4
Colombia	Fifth	E/C.12/COL/5
Kazakhstan	Initial	E/C.12/KAZ/1
Mauritius	Second-fourth	E/C.12/MUS/4

Forty-fifth session (1-19 November 2010)		
Dominican Republic	Third	E/C.12/DOM/3
The Netherlands and Netherlands Antilles	Fourth-fifth and Fourth	E/C.12/NLD/4-5 and E/C.12/NLD/4/Add.1
Sri Lanka	Second-fourth	E/C.12/LKA/2-4
Switzerland	Second-third	E/C.12/CHE/2-3
Uruguay	Third-fourth	E/C.12/URY/3-4

Chapter III

Overview of the present working methods of the Committee

26. This chapter of the Committee's report aims at providing a concise and up-to-date overview and explanation of the ways in which the Committee carries out its various functions, including information about recent developments in its working methods. It is designed to make the Committee's current practice more transparent and readily accessible so as to assist States parties and others interested in the implementation of the Covenant.

27. Since its first session, in 1987, the Committee has made a concerted effort to devise appropriate working methods that adequately reflect the nature of the tasks with which it has been entrusted. In the course of its 43 sessions it has sought to modify and develop these methods in the light of its experience. These methods will continue to evolve.

A. General reporting guidelines

28. The Committee attaches major importance to the need to structure the reporting process and the dialogue with each State party's representatives in such a way as to ensure that the issues of principal concern to it are dealt with in a methodical and informative manner. For this purpose, in 2008, the Committee has adopted revised reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant,[1] with a view to assisting States in the reporting process and improving the effectiveness of the monitoring system as a whole.

B. Examination of States parties' reports

1. Work of the pre-sessional working group

29. A pre-sessional working group meets for five days prior to each of the Committee's sessions. It is composed of five members of the Committee nominated by the Chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors.

30. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion.[2]

31. It is generally accepted that the complex nature and diverse range of many of the issues raised in connection with the implementation of the Covenant constitute a strong argument in favour of providing States parties with the possibility of preparing in advance to answer some of the principal questions arising out of their

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[1] *Official Records of the Economic and Social Council, 2009, Supplement No. 4* (E/2009/22-E/C.12/2008/3), annex VIII.

[2] Ibid., *1998, Supplement No. 4* (E/1988/14-E/C.12/1988/4), chap. IV, para. 361.

reports. Such an arrangement also enhances the likelihood that the State party will be able to provide precise and detailed information.

32. With regard to its own working methods, the working group, in the interests of efficiency, allocates to each of its members initial responsibility for undertaking a detailed review of a specific number of reports and for putting before the working group a preliminary list of issues. The decision as to how the reports should be allocated for this purpose is based in part on the areas of expertise of the member concerned. Each draft by a country rapporteur is then revised and supplemented on the basis of observations by the other working group members and the final version of the list is adopted by the working group as a whole. This procedure applies equally to both initial and periodic reports.

33. In preparation for the pre-sessional working group, the Committee has asked the secretariat to place at the disposal of its members a country analysis as well as all pertinent documents containing information relevant to each of the reports to be examined. For this purpose, the Committee invites all concerned individuals, bodies and non-governmental organizations to submit relevant and appropriate documentation to the secretariat. It has also asked the secretariat to ensure that certain types of information are regularly placed in the country files.

34. The lists of issues drawn up by the working group are given directly to a representative of the State concerned, along with a copy of the Committee's most recent report and with a note stating the following:

> The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the Committee believes that the constructive dialogue which it wishes to have with the representatives of the State party is greatly facilitated by making the list available in advance of the Committee's session. In order to improve the dialogue that the Committee seeks, it strongly urges each State party to provide in writing its replies to the list of issues and to do so sufficiently in advance of the session at which its report will be considered to enable the replies to be translated and made available to all members of the Committee.

35. In addition to the task of formulating the lists of issues, the pre-sessional working group is also entrusted with a variety of other tasks designed to facilitate the work of the Committee as a whole. These have included: discussing the most appropriate allocation of time for the consideration of each State report; considering the issue of how best to respond to supplementary reports containing additional information; examining draft general comments; considering how best to structure the day of general discussion; and other relevant matters.

2. Consideration of the reports

36. In accordance with the established practice of each of the United Nations human rights treaty monitoring bodies, representatives of the reporting States should be present at the meetings of the Committee when their reports are examined in order to ensure a constructive dialogue with the Committee. The following procedure is generally observed: the representative of the State party is invited to introduce the report by making brief introductory comments and introducing any written replies to the list of issues drawn up by the pre-sessional working group. The

Committee then considers the report by clusters of articles (usually articles 1-5, 6-9, 10-12 and 13-15), taking particular account of the replies furnished in response to the list of issues. The Chairperson will normally invite questions or comments from Committee members in relation to each issue and then invite the State party representatives to reply immediately to questions that do not require further reflection or research. Any remaining questions are taken up at a subsequent meeting or, if necessary, may be the subject of additional information provided to the Committee in writing. Members of the Committee are free to pursue specific issues in the light of the replies thus provided, although the Committee has urged them not to (a) raise issues outside the scope of the Covenant; (b) repeat questions already posed or answered; (c) add unduly to an already long list on a particular issue; or (d) speak for more than five minutes in any one intervention. Representatives of relevant specialized agencies and other international bodies may also be invited to contribute at any stage of the dialogue.

37. The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction, positive aspects, factors and difficulties impeding the implementation of the Covenant, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

38. The concluding observations, once formally adopted, are generally made public on the final day of the session. They are forwarded as soon as possible to the State party concerned and included in the Committee's report. If it so wishes, the State party may address any of the Committee's concluding observations in the context of any additional information that it provides to the Committee.

39. In general, the Committee devotes three meetings (of three hours each) to its public examination of States parties' reports. In addition, it generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of concluding observations.

3. Comments by States parties on concluding observations

40. Once the Committee has adopted its concluding observations on the report of a State party, and if the latter submits any comments thereon to the Committee, these are made public, as submitted, as Committee documents and mentioned in the annual report. Comments from States parties are published for information purposes only.

41. During the reporting period, the Committee received comments from Cyprus (E/C.12/CYP/CO/5/Add.1) on the concluding observations that the Committee adopted at its forty-second session in relation to the fourth to fifth periodic reports submitted by Cyprus and from the United Kingdom of Great Britain and Northern Ireland (E/C.12/GBR/CO/5/Add.1) on the concluding observations that the Committee adopted at its forty-second session in relation to the fourth to fifth periodic reports submitted by the United Kingdom.

4. Postponement of the consideration of reports

42. Last-minute requests by States to postpone the consideration of a report that has been scheduled for examination at a particular session are extremely disruptive for all concerned and have in the past caused major problems for the Committee. Accordingly, the Committee's long-standing policy is not to grant such requests and to proceed with its consideration of all scheduled reports, even in the absence of a representative of the State party concerned.

C. Follow-up procedure in relation to the consideration of reports

43. At its twenty-first session,[3] the Committee decided that:

(a) In all concluding observations, the Committee would request the State party to inform the Committee, in its next periodic report, about steps taken to implement the recommendations in the concluding observations;

(b) Where appropriate, the Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data at a time prior to the date that the next periodic report is due to be submitted;

(c) Where appropriate, the Committee may, in its concluding observations, ask the State party to respond to any pressing specific issue identified in the concluding observations prior to the date that the next report is due to be submitted;

(d) Any information provided in accordance with (b) and (c) above would be considered by the next meeting of the Committee's pre-sessional working group;

(e) In general, the working group could recommend that the Committee take one of the following measures:

(i) That the Committee take note of such information;

(ii) That the Committee adopt specific additional concluding observations in response to that information;

(iii) That the matter be pursued through a request for further information; or

(iv) That the Chairperson of the Committee be authorized to inform the State party, in advance of the next session, that the Committee would take up the issue at its next session and that, for that purpose, the participation of a representative of the State party in the work of the Committee would be welcome;

(f) If the information requested in accordance with (b) and (c) above is not provided by the specified date, or is patently unsatisfactory, the Chairperson, in consultation with the members of the Bureau, could be authorized to follow up the matter with the State party.

44. In situations in which the Committee considers that it is unable to obtain the information it requires on the basis of the above-mentioned procedures, it may decide to adopt a different approach. In particular, the Committee may request that the State party concerned accept a visit from one or two members of the Committee.

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[3] On 1 December 1999 (53rd meeting).

The purposes of such an on-site visit would be: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee would state specifically the issue(s) with respect to which its representative(s) would seek to gather information from all available sources. The representative(s) would also have the task of considering whether the programme of advisory services administered by the Office of the United Nations High Commissioner for Human Rights could be of assistance in connection with the specific issue at hand.

45. At the conclusion of the visit, the representative(s) would report to the Committee. In the light of the report presented by its representative(s), the Committee would then formulate its own conclusions. Those conclusions would relate to the full range of functions carried out by the Committee, including those relating to technical assistance and advisory services, to be provided by the Office of the High Commissioner.

46. This procedure has already been applied in relation to two States parties and the Committee considers the experience to have been a very positive one in both instances. In a case where the State party concerned does not accept the proposed mission, the Committee will consider making whatever recommendations might be appropriate to the Economic and Social Council.

D. Procedure in response to non-submitted and considerably overdue reports

47. The Committee believes that a situation of persistent non-reporting by States parties undermines one of the foundations of the Covenant.

48. Accordingly, the Committee resolved at its sixth session to begin in due course to consider the situation concerning the implementation of the Covenant in respect of each State party whose reports are very significantly overdue. At its seventh session it resolved to begin scheduling consideration of such reports at its future sessions and to notify the States parties concerned. At its thirty-sixth session, the Committee adopted the following procedure:

(a) To review three lists of States parties whose reports are overdue:

(i) States parties with reports that were due within the past eight years;

(ii) States parties with reports that were due from 8 to 12 years ago;

(iii) States parties with reports that were due more than 12 years ago.

(b) To send reminders to States parties as follows:

(i) The first letter will be sent to all States parties about the dates on which their reports are due; those with overdue reports will be reminded of and requested to submit those reports as soon as possible;

(ii) A second letter will be sent to States parties with the most outstanding and overdue reports that do not respond to the reminder, informing them that the Committee plans to consider the overdue report(s) at a specific session in the future, and requesting that those reports be submitted in sufficient time to allow a constructive dialogue to take place;

(iii) A third letter will be sent if no response is received to the second letter, confirming that the Committee will proceed to review the implementation of the Covenant in the State party at the session communicated in the earlier letter in light of all available information;

(c) In situations where the State party concerned indicates that a report will be provided to the Committee and upon a request from the State party, the Chairperson may decide to defer its consideration of the implementation of the Covenant in the State party for one session.

E. Consolidation of reports

49. At its 55th meeting, held on 22 November 2006 (thirty-seventh session), the Committee reviewed the situation of overdue reports, including recent submissions of several long overdue reports, and decided as follows:

(a) The Committee will accept from States parties that have never submitted a report under the Covenant, a one-time submission of up to three reports consolidated in a single document, in order to bring them up to date with their reporting obligations;

(b) A consolidated report should contain a general overview of important developments in relation to the implementation of the Covenant over the entire period covered by the reports submitted and present detailed information on the present situation.

F. Action by the Committee with regard to information on economic, social and cultural rights received from sources other than the States parties

1. Information provided in connection with the consideration by the Committee of a State party report

50. The Committee also takes into account the information provided to it by sources other than the State party in connection with its consideration of a State party's report. That information, being an integral part of the Committee's constructive dialogue with a State party, is made available by the secretariat to the State party concerned in advance of the Committee's consideration of the report of that State party.

2. Information received following consideration by the Committee of a State party report and adoption of concluding observations

51. On various occasions in the past, the Committee has received information, mainly from non-governmental organizations, after consideration of the State party's report and adoption of concluding observations thereon. In fact this was follow-up information on the Committee's conclusions and recommendations. Not being in a position to consider and act upon such information without reopening its dialogue with a State party (except in cases specifically addressed in concluding

observations), the Committee will consider and act upon the information received from sources other than a State party only in cases where such information has been specifically requested in its concluding observations.

52. The Committee considers that, following its consideration of the State party report and adoption of concluding observations, the primary responsibility for their implementation lies with the national Government, which is bound to report on measures taken in this respect to the Committee in its next periodic report. Therefore, the Committee recommends that information referred to in the preceding paragraph be submitted by authors directly to national competent authorities with a view to assisting them in implementing the Committee's concluding observations.

3. Information provided with respect to non-reporting States parties

53. The Committee has also been receiving information from international and national non-governmental organizations on the status of the implementation of economic, social and cultural rights by:

(a) States parties that have not submitted any report at all since ratification of the International Covenant on Economic, Social and Cultural Rights and its entry into force;

(b) States parties with long overdue periodic reports.

54. In both cases the States parties' failure to comply with their obligations under the Covenant, and in particular with their reporting obligations, had made it impossible for the Committee to monitor effectively the implementation by those States of the economic, social and cultural rights set forth in the Covenant in accordance with the mandate conferred on the Committee by the Economic and Social Council.

55. At its thirtieth session in 2003, the Committee, in a spirit of open and constructive dialogue with States parties, decided that in both cases referred to above, it may take the following action on a case-by-case basis:

(a) The Committee may informally bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay;

(b) The Committee may formally — through a letter from the Chairperson — bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay. The Committee may formally request the State party to provide it with information addressing issues raised in the submissions of non-governmental organizations and to submit its overdue report without further delay. That letter will also be made available to the non-governmental organizations concerned upon request.

G. Day of general discussion

56. At each session, the Committee devotes one day, usually the Monday of the third week, to a general discussion of a particular right or of a particular aspect of the Covenant. The purpose is threefold: such a general discussion assists the Committee in developing in greater depth its understanding of the relevant issues; it enables the Committee to encourage inputs into its work from all interested parties;

and helps the Committee to lay the basis for a future general comment. The issues that have been the focus of discussions held to date by the Committee may be found in annex VI to the present report.

H. Other consultations

57. The Committee has sought to coordinate its work with that of other bodies to the greatest extent possible and to draw as widely as it can on available expertise in the fields of its competence. The Committee has also sought to draw on the expertise of the relevant specialized agencies and United Nations bodies, both in its work as a whole and, more particularly, in the context of its general discussions. It has also consistently invited individuals such as special rapporteurs of the Human Rights Council and the Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights, chairpersons of Council and Commission working groups and others to address it and engage in discussions.

58. In addition, the Committee has invited a variety of experts who have a particular interest in, and knowledge of, some of the issues under review to contribute to its discussions. These contributions have added to its understanding of some aspects of the questions arising under the Covenant.

I. Participation of non-governmental organizations in the work of the Committee

59. In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it.[4] They may do so in writing at any time prior to the consideration of a given State party's report. The Committee's pre-sessional working group is also open to the submission of information in person or in writing from any non-governmental organization, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part of the first afternoon at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be credible; (d) not be abusive. The relevant meeting is open and provided with interpretation and press services, but is not covered by summary records.

60. The Committee has requested the secretariat to ensure that written information formally submitted to it by non-governmental organizations in relation to the consideration of a specific State party report is made available as soon as possible to the representatives of the State party concerned. Prior to a session, this is normally done through posting on the website of the Office of the High Commissioner for Human Rights, and direct delivery to the representatives of the concerned State party during the dialogue. The Committee therefore assumes that if any of this

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[4] *Official Records of the Economic and Social Council, 2001, Supplement No. 2* (E/2001/22-E/C.12/2000/21), annex V: "Non-governmental organization participation in the activities of the Committee on Economic, Social and Cultural Rights".

information is referred to during the dialogue with the State party, the latter will already be aware of the information.

61. In an effort to secure the most effective and widest possible participation of non-governmental organizations in its activities, the Committee adopted, at its twenty-fourth session in 2000, a document that explains the modalities of their participation in the Committee's work and provides detailed guidelines for non-governmental organizations with a view to facilitating their cooperation with the Committee.[5]

J. General comments

62. In response to an invitation addressed to it by the Economic and Social Council, the Committee decided to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the Covenant, in particular with a view to assisting the States parties in fulfilling their obligations under the Covenant. As of 20 November 2009, the Committee had adopted 21 general comments (see annex III to the present report).

63. By the end of its forty-third session (20 November 2009), the Committee and the governmental expert sessional working group, which existed prior to the creation of the Committee, had examined partial reports concerning rights covered by articles 6 to 9, 10 to 12 or 13 to 15 of the Covenant, and comprehensive reports covering all the substantive articles, submitted by 120 of the 157 States parties to the Covenant which had reports due by then.[6] The total number of States parties to the Covenant reached 160 by the end of the forty-third session. They represented all regions of the world, with different political, legal, socio-economic and cultural systems. The reports submitted to date have illustrated many of the problems that might arise in implementing the Covenant.

64. Through its general comments, the Committee endeavours to make the experience gained through the examination of States' reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures; and to stimulate the activities of the States parties, international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions drawn therefrom, revise and update its general comments.

65. At its twenty-first session, the Committee adopted the outline for drafting general comments on specific rights enshrined in the Covenant.[7] The Committee agreed that the subject matter of a particular general comment would influence the

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[5] Ibid.

[6] The 157 States parties do not include Pakistan, Papua New Guinea and Bahamas, which having ratified the Covenant in 2008, were not obliged to submit their reports prior to 20 November 2009.

[7] *Official Records of the Economic and Social Council, Supplement No. 2* (E/2000/22-E/C.12/1999/11 and Corr.1), annex IX.

overall structure of that comment and observed that the outline was not intended to be strictly adhered to. However, the outline provided useful signposts, a checklist of issues to be considered in the process of drafting a general comment. In this respect, the outline would assist in ensuring consistency in the content, format and ambit of general comments to be adopted by the Committee. The Committee emphasized the importance of ensuring that general comments are reader-friendly, of reasonable length and readily understandable to a broad range of readers, primarily States parties to the Covenant. The outline will assist in ensuring consistency and clarity in the structure of the general comments, thus promoting their accessibility, and strengthening the authoritative interpretation of the Covenant provided by the Committee through its general comments.

K. Statements adopted by the Committee

66. With a view to assisting States parties to the Covenant, the Committee adopts statements to clarify and confirm its position with respect to major international developments and issues bearing upon the implementation of the Covenant. As of 20 November 2009, the Committee had adopted 17 statements (see annex IV to the present report).

Chapter IV

Submission of reports by States parties under articles 16 and 17 of the Covenant

67. In accordance with rule 58 of its rules of procedure, the Committee, at its 29th meeting on 2 November 2009, considered the status of submission of reports under articles 16 and 17 of the Covenant.

68. In that connection, the Committee had before it the following document:

(a) Note by the Secretary-General on the revised general guidelines regarding the form and contents of reports to be submitted by States parties (E/C.12/2008/2);[8]

(b) Note of the Secretary-General on the States parties to the Covenant and the status of submission of reports as at 9 September 2009 (E/C.12/43/2).

69. The Secretary-General informed the Committee that, in addition to the reports scheduled for consideration by the Committee at its forty-second and forty-third sessions (see paragraphs 70 and 71 below), he had received, from 23 November 2008 to 20 November 2009, the following reports submitted under articles 16 and 17 of the Covenant by States parties:

> The initial reports of Turkmenistan (E/C.12/TKM/1), Peru (E/C.12/PER/1-4), Ethiopia (E/C.12/1-4), Tanzania (E/C.12/TZA/1-4) and Mauritania (E/C.12/MRT/1); the second periodic reports of Cameroon (E/C.12/CMR/1-2), Slovakia (E/C.12/SVK/2) and Iran (E/C.12/IRN/2); the third periodic report of Estonia (E/C.12/EST/3), Israel (E/C.12/ISR/3), New Zealand (E/C.12/NZL/3), Argentina (E/C.12/ARG/3), Ecuador (E/C.12/ECU/3) and Azerbaijan (E/C.12/AZE/3); the combined fourth and fifth periodic reports of Bulgaria (E/C.12/BGR/4-5); the fifth report of Spain (E/C.12/ESP/5).

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[8] See note 1 above.

Chapter V

Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

70. At its forty-second session, the Committee examined the following reports submitted by five States parties under articles 16 and 17 of the Covenant:

Initial report	
Cambodia	E/C.12/KHM/1
Second periodic report	
Brazil	E/C.12/BRA/2
Fourth periodic report	
Australia	E/C.12/AUS/4
United Kingdom	E/C.12/GBR/5
Cyprus	E/C.12/CYP/5

71. At its forty-third session, the Committee examined the following reports submitted by five States parties under articles 16 and 17 of the Covenant:

Initial report	
Chad	E/C.12/TCD/3 (Combined initial and second and third periodic reports)
Second periodic report	
Madagascar	E/C.12/MDG/2
Democratic Republic of the Congo	E/C.12/COD/5 (Combined second, third, fourth and fifth periodic reports)
Third periodic report	
Republic of Korea	E/C.12/ROK/3
Fifth periodic report	
Poland	E/C.12/POL/5

72. The Committee considered the initial to third reports of Chad, in the absence of a delegation under rule 62 (3) of the rules of procedure, as the delegation could not attend the session as planned.

73. At its eighth session, the Committee had decided to discontinue its practice of including in its annual report summaries of the consideration of country reports. Reference is made, in this regard, to the relevant summary records of the meetings of the Committee at which the reports were considered. In accordance with modified rule 57 of the Committee's rules of procedure, the annual report should include the

Committee's concluding observations relating to each State party's report. Accordingly, the following paragraphs, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its forty-second and forty-third sessions. In accordance with established Committee practice, members do not take part in either the drawing up or the adoption of the concluding observations relating to their own country's report.

Forty-second session

Australia

74. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Australia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/AUS/4) at its 3rd, 4th and 5th meetings, held on 5 and 6 May 2009 (E/C.12/2009/SR.3, 4 and 5), and adopted, at its 26th meeting held on 20 May 2009, the following concluding observations.

A. Introduction

75. The Committee welcomes the open and constructive dialogue with the delegation of the State party, as well as its comprehensive written replies to its list of issues (E/C.12/AUS/Q/4 and Add.1). However, it regrets that the format chosen in preparing the fourth periodic report of Australia did not provide the Committee with a substantive report on the measures adopted by the State party to give effect to the Covenant rights and on the progress made in achieving the observance of those rights.

76. The Committee welcomes the consultative contribution of the Australian Human Rights Commission to the State party reporting process, as well as the participation and fruitful contribution of non-governmental organizations to the Committee's work.

B. Positive aspects

77. The Committee welcomes the parliamentary apology to the indigenous peoples, victims of the "Stolen Generation" policies, issued on 13 February 2008, and acknowledges the State party's commitment to build a sustained and constructive partnership with indigenous peoples, and to close the gap in the enjoyment of the Covenant rights between indigenous and non-indigenous Australians.

78. The Committee notes with satisfaction that the State party has repealed legal provisions which discriminated against same-sex couples in relation to financial and work-related benefits.

79. The Committee notes with appreciation the Fair Work Act 2009, which introduces new employment standards, and improves the protection of the right to work, in line with the Committee's recommendations adopted in 2000.

80. The Committee welcomes the steps taken to combat violence against women, in particular the establishment of the National Council to Reduce Violence against Women and their Children, in 2008.

81. The Committee welcomes the ratification by the State party of the United Nations Convention on Persons with Disabilities, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2008, as well as its formal support to the United Nations Declaration on the Rights of Indigenous Peoples.

C. Factors and difficulties impeding the implementation of the covenant

82. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

83. While welcoming the National Human Rights Consultation regarding the legal recognition and protection of human rights which is currently being carried out in the State party, the Committee regrets that the terms of reference for the National Human Rights Consultation do not specifically call for the consideration of economic, social and cultural rights.

The Committee affirms the principle of interdependency and indivisibility of human rights and calls on the State party to include economic, social and cultural rights when considering the submissions received.

84. The Committee regrets that the Covenant has not yet been incorporated into domestic law by the State party, despite the Committee's recommendations adopted in 2000 (E/C.12/1/Add.50). It notes with concern the lack of a legal framework for the protection of economic, social and cultural rights at the Federal level, as well as of an effective mechanism to ensure coherence and compliance of all jurisdictions in the Federation with the State party's obligations under the Covenant.

Bearing in mind the provisions of article 28 of the Covenant, the Committee reiterates that the principal responsibility for its implementation lies with the State party's Federal government and recommends that it: (a) enact comprehensive legislation giving effect to all economic, social and cultural rights uniformly across all jurisdictions in the Federation; (b) consider the introduction of a Federal charter of rights that includes recognition and protection of economic, social and cultural rights, as recommended by the Australian Human Rights Commission; (c) establish an effective mechanism to ensure the compatibility of domestic law with the Covenant and to guarantee effective judicial remedies for the protection of economic, social and cultural rights.

85. The Committee regrets that in 2008-2009 the State party has devoted only 0.32 per cent of its gross national income (GNI) to official development assistance (ODA), whereas the United Nations target for ODA is 0.7 per cent of GDP for developed countries.

The Committee recommends that the State party increase its official development assistance to 0.7 per cent of its GDP, as reaffirmed at the Follow-up International Conference on Financing for Development to Review the

Implementation of the Monterrey Consensus, held in Doha on 29 November-2 December 2008.

86. The Committee notes with concern that the Australian Human Rights Commission has limited competency as regard the Covenant rights and lacks adequate human and financial resources, which affects its capacity to fulfil its role and functions.

The Committee recommends that the State party strengthen the mandate of the Australian Human Rights Commission in order to cover all the Covenant rights and ensure that adequate human and financial resources are allocated to this institution, in line with the Paris Principles.

87. The Committee notes with concern that the State party's anti-discrimination legislation does not provide comprehensive protection against all forms of discrimination in all areas related to the Covenant rights (art. 2, para. 2).

The Committee recommends that the State party enact Federal legislation to comprehensively protect the rights to equality and non-discrimination on all the prohibited grounds.

88. The Committee remains concerned that some of the Northern Territory Intervention measures adopted by the State party in response to the 2007 *Little Children are Sacred* report, are inconsistent with the Covenant rights, in particular with the principle of non-discrimination, and have a negative impact on the realization of the rights of indigenous peoples. The Committee notes with regret that the Northern Territory Intervention measures were adopted without sufficient and adequate consultation with the indigenous peoples concerned (art. 2, para. 2).

The Committee recommends that the State party (a) address the human rights violations identified in the 2007 *Little Children are sacred* report bearing in mind the recommendations of the 2008 report of the Northern Territory Intervention Response Review board in this regard; (b) conduct formal consultations with the indigenous peoples concerned regarding the operation and impact of the Northern Territory Intervention; (c) establish a national indigenous representative body with adequate resources; (d) ratify ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

89. The Committee regrets that insufficient measures have been taken by the State party to ensure an adequate standard of living for persons with disabilities. In particular, it notes with concern that section 52 of the Disability Discrimination Act 1992 exempts migration laws, regulations, policies and practices, from the effects of the Act, leading to negative immigration decisions based on disability or health conditions. The Committee expresses concern at the fact that this situation has had a particularly negative impact on the families of asylum-seekers (arts. 2, paras. 2; 10 and 11).

The Committee encourages the State party to strengthen its efforts towards the adoption of concrete measures to enable persons with disabilities to fully enjoy the rights guaranteed by the Covenant. It recommends that the Migration Act 1958 and the Disability Discrimination Act 1992 be amended to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.

90. The Committee notes with concern that despite the State party's efforts to improve gender equality, a wage gap still persists between men and women in the workplace, particularly in managerial positions. It is also concerned at the low percentage of women in high-ranking positions in political and public life (art. 3).

The Committee recommends that the State party continue strengthening its effort to enhance equality between men and women in the workplace, in particular those initiatives aimed at implementing the principle of equal pay for work of equal value. The State party should consider implementing the recommendation of the Senate Legal and Constitutional Affairs Committee in relation to amending the Sex Discrimination Act 1984.

91. The Committee notes with concern the high unemployment rates among indigenous people, asylum-seekers, migrants and people with disabilities, and the significant difficulties they face to enjoy their right to work equally (arts. 2, paras. 2; and 6.

The Committee recommends that special programmes and measures be designed to address the significant barriers to the enjoyment of the right to work faced by many indigenous people, asylum-seekers, migrants and people with disabilities, including measures to protect them from exploitation.

92. The Committee is concerned that provisions of the Building and Construction Industry Improvement Act 2005 seriously affect freedom of association of building and construction workers, by imposing significant penalties for industrial actions, including six months of incarceration. The Committee is also concerned that before workers can lawfully take industrial action at least 50 per cent of employees must vote in a secret ballot and a majority must vote in favour of taking the industrial action which unduly restricts the right to strike, as laid down in article 8 of the Covenant and ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise (art. 8).

The Committee recommends that the State party continue its efforts to improve the realization of workers rights under the Covenant. It should remove, in law and in practice, obstacles and restrictions to the right to strike, which are inconsistent with the provisions of article 8 of the Covenant and ILO Convention No. 87. In particular, the Committee recommends that the State party abrogate the provisions of the Building and Construction Industry Improvement Act 2005 that imposes penalties, including six months of incarceration, for industrial action and consider amending the Fair Work Act 2009. The State party should lift the restrictions on "pattern barging", the pursuit of multi-employer agreements and matters that are not "permitted", and to remove the secret ballot requirements for workers who wish to take industrial action.

93. The Committee is concerned that the social security system in the State party does not ensure universal coverage and that the insufficient amount of certain benefits does not provide an effective income support system. The Committee is concerned that existing conditionalities for the payment of benefits have a negative impact on disadvantaged and marginalized individuals and groups (art. 9).

The Committee recommends that the State party take additional measures, legislative or otherwise, to ensure universal coverage of the social security system so as to include asylum-seekers, newly arrived immigrants and

indigenous peoples. The Committee also recommends that social security benefits, including unemployment benefits, old-age pensions and youth allowance enable recipients to enjoy an adequate standard of living. The Committee strongly recommends that the State party review conditionalities such as "mutual obligations" in the welfare to work programme and the "quarantining" of welfare payments under the Northern Territory Intervention that may have a punitive effect on disadvantaged and marginalized families, women and children. The Committee further recommends that the State party consider ratifying ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security.

94. The Committee notes with concern that the State party has not introduced a paid maternity leave scheme yet, in spite of the Committee's recommendations adopted in 2000 (art. 10).

The Committee recommends that the State party introduce a compulsory paid maternity and paternity leave scheme and consider ratifying ILO Conventions No. 103 (1952) concerning Minimum Standards of Social Security and No. 183 (2000) concerning the Revision of the Maternity Protection Convention (Revised), 1952.

95. The Committee notes with concern that, despite the efforts undertaken by the State party to address domestic violence, including violence against women, this practice persists in Australia, and affects in particular indigenous women (art. 10).

The Committee recommends that the State party take appropriate measures, including specific legislative measures criminalizing acts of domestic violence. In particular, the State party should consider adopting the Australian Human Rights Commission's proposals related to the development of the new Plan of Action to Reduce Violence against Women and their Children, ensuring that it reflects human rights principles; and increase shelters and support services for the victims. The Committee further recommends that the State party increase its efforts to prosecute acts of domestic violence. The Committee requests the State party to include in its next periodic report available information on the number and nature of reported cases of domestic violence, on the conviction, and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence.

96. The Committee is concerned at the persistence of trafficking of human beings, in particular women, in the territory of the State party, in spite of the State party's efforts to combat trafficking in human beings, in particular the establishment of the National Round Table in 2008, as well as the funding provided to NGOs working in this area (art. 10).

The Committee encourages the State party to continue its efforts to combat trafficking of human beings, and in particular it recommends the adoption of a national strategy from a human rights perspective, to combat the trafficking of human beings and to address the exploitation resulting from this practice.

97. The Committee notes with concern that, despite the State party's economic prosperity, 12 per cent of the Australian population lives in poverty, and poverty rates remain very high among disadvantaged and marginalized individuals and groups such as indigenous peoples, asylum-seekers, migrants and persons with disabilities. It regrets that the State party has not yet adopted a comprehensive

strategy to combat poverty and social exclusion, and that no steps have been taken to adopt an official poverty line, despite the Committee's recommendations adopted in 2000. The Committee recalls that this criterion is needed to determine the progress achieved over time by the State party to reduce poverty (art. 11).

The Committee urges the State party to take all necessary measures to combat poverty and social exclusion, and to develop a comprehensive poverty reduction and social inclusion strategy which should integrate the economic, social and cultural rights, in line with the Committee's statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee recommends that the State party adopt evaluation measures to assess the impact of its poverty and social reduction strategies and identify its weaknesses, and requests that the State party include, in its next report, comparative data disaggregated by gender, age, rural and urban populations, as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty.

98. The Committee is concerned at the retention of the mandatory detention policy for asylum-seekers for unauthorized arrivals and notes that in its 2008 Immigration Detention Report, the Australian Human Rights Commission expressed serious concerns about the immigration detention facilities, in particular in Christmas Island. It is also concerned at the fact that some asylum-seekers are detained for prolonged and indefinite periods of time, which results in a negative impact on their mental health, in spite of the measures taken by the State party to improve the protection of asylum-seekers, including its new "seven values" policy (arts. 2, paras. 2; 11 and 12).

The Committee encourages the State party to implement without delay its new "seven values" in policy, and carry out the Australian Human Rights Commission's recommendations adopted in its 2008 Immigration Detention Report, including the repeal of the mandatory immigration detention system and the closure of the Christmas Island Detention Centre.

99. The Committee notes with concern that the incidence of homelessness has increased in the State party over the last decade, mainly affecting indigenous peoples, in spite of the measures undertaken by the State party to address homelessness in Australia, including its National Housing Strategy, as well as its commitment to halve homelessness by 2020 and to improve housing affordability for vulnerable individuals (art. 11).

The Committee recommends that the State party take effective measures, in line with the Committee's general comment No. 4 (1991) on the right to adequate housing (article 11, paragraph 1, of the Covenant), to address homelessness in its territory. The State party should implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the report of his mission to Australia (A/HRC/4/18/Add.2). The Committee requests the State party to provide, in its next periodic report, disaggregated data and information which will allow the Committee to assess the progress made by the State party in improving the housing situation in its territory, in particular with respect to indigenous peoples.

100. The Committee is concerned at the negative impact of climate change on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples, in spite of the State party's recognition of the challenges imposed by climate change (art. 1, para. 1).

The Committee recommends that the State party take all the necessary and adequate measures to ensure the enjoyment of the right to food and of the right to affordable drinking water and sanitation in particular by indigenous peoples, using a human rights-based approach, in line with the Committee's general comments No. 15 (2002) on the right to water, No. 14 (2000) on the right to the highest attainable standard of health and No. 12 (1999) on the right to food. It also recommends that the State party intensify its efforts to address issues of climate change, including through carbon reduction schemes. The State party is encouraged to reduce its greenhouse gas emissions and to take all the necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples, and put in place effective mechanisms to guarantee consultation of affected Aboriginal and Torres Strait Islander peoples, so to enable them to exercise their rights to an informed decision as well as to harness the potential of their traditional knowledge and culture (in land management and conservation).

101. In spite of the State party's commitment to "close the gap" in key health indicators between indigenous and non-indigenous people, the Committee notes with concern the continuing high levels of ill health among indigenous people, in particular women and children (arts. 2, paras. 2; and 12).

The Committee calls on the State party to take immediate steps to improve the health situation of indigenous people, in particular women and children, including by implementing a human rights framework that ensures access to the social determinants of health such as housing, safe drinking water, electricity and effective sanitation systems. Further, the Committee invites the State party to identify disaggregated health indicators and appropriate national benchmarks in relation to the right to health, in line with the Committee's general comment No. 14, and to include information on the process of identifying such indicators and benchmarks in its next periodic report.

102. The Committee notes with concern that health services in prisons are generally inadequate, and in particular, drug abuse and the high rates of sexually transmitted diseases remains a serious problem (art. 12).

The Committee recommends that the State party (a) develop adequate strategies to provide all detainees with appropriate health and medical care, in line with the Committee's general comment No. 14 and the relevant United Nations standard minimum rules for the treatment of prisoners; (b) ensure that adequate health care for prisoners be taken into account in its health programmes and policies; (c) encourage the Detention Health Advocacy Group to adopt a human rights-based approach when proposing reforms to the detention care system.

103. The Committee notes with concern the insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in

particular for indigenous peoples, prisoners and asylum-seekers in detention (arts. 2, paras. 2; and 12).

The Committee recommends that the State party take effective measures to ensure the equal enjoyment of the right to the highest attainable standard of mental health, including by (a) allocating adequate resources for mental health services and other support measures for persons with mental health problems in line with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care; (b) implementing the recommendations of the Australian Medical Association's 2008 report on indigenous health; (c) reducing the high rate of incarceration of people with mental diseases; (d) ensuring that all prisoners receive an adequate and appropriate mental health treatment when needed.

104. The Committee notes with concern the persistence in the State party of disparities in access to the educational system for indigenous peoples, including those living in remote areas, compared with the rest of the population, as well as the deficient quality of education provided to persons living in remote areas, in particular indigenous peoples. It regrets that access to preschool education is not equally guaranteed throughout the State party (arts. 2, paras. 2; and 13).

The Committee recommends that the State party produce accurate national data on indigenous school-age children in remote areas to assess whether the existing education infrastructure and services meet the needs of indigenous peoples living in remote areas. The Committee also recommends that wherever the school provision does not meet the populations' needs, the State party develop an adequate national plan to improve the educational system for indigenous peoples, including in remote areas.

105. The Committee notes with concern that, despite the reforms to the native title system, the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act, have a negative impact on the recognition and protection of the right of indigenous peoples to their ancestral lands (art. 15).

The Committee recommends that the State party increase its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander Peoples, and remove all obstacles to the realization of the right to land of indigenous peoples.

106. The Committee notes with concern that according to the National Indigenous Languages Survey, only about 145 of the original estimated 250 indigenous languages exist today in the State party, and most of them are critically endangered. The Committee is also concerned that, despite the national programmes, including the National Arts and Crafts Industry Support Program, the indigenous cultural and intellectual property are not adequately protected in the State party (art. 15).

The Committee recommends that the State party (a) strengthen its efforts to guarantee the indigenous peoples' rights under articles 1 and 15 to enjoy their identity and culture, including through the preservation of their traditional languages; (b) consider improving the Maintenance of Indigenous Languages and Records Program; (c) preserve and promote bilingual education at schools; (d) reform the Copyright Act 1986 to extend its legal protection to indigenous people; and (e) develop a special intellectual property regime that protects the collective rights of indigenous peoples, including protection of their scientific

products, traditional knowledge and medicine. The Committee also recommends that a registry of intellectual property rights of indigenous peoples be opened and that the State party ensure that the profits derived thereof benefit them directly.

107. The Committee recommends that the State party provide human rights education on economic, social and cultural rights to students at all levels of education and make available extensive human rights training for members of all professions and sectors having a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, migration officers, the police and the military.

108. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

109. The Committee encourages the State party to give positive consideration to signing and ratifying the Optional Protocol to the Covenant.

110. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue consultations with non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

111. The Committee urges the State party to prepare a fifth periodic report in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2) and requests the State party to submit its next periodic report by 30 June 2014.

Brazil

112. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Brazil on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BRA/2) at its 6th, 7th and 8th meetings held on 6 and 7 May 2009 (E/C.12/2009/SR.6-8) and adopted, at its 23rd meeting held on 19 May, the following concluding observations.

A. Introduction

113. The Committee welcomes the submission of the second periodic report of the State party and the opportunity to engage in a constructive dialogue with the State party. The Committee also welcomes the State party's written replies to its list of issues, as well as the responses provided by the multisectoral delegation of the State party to the Committee's oral questions.

B. Positive aspects

114. The Committee welcomes the legislative and other measures adopted by the State party since the examination of its initial report, including the following:

(a) Law No. 11.340 (*Maria da Penha Law*), passed in 2006, which provides for the repression of domestic and family violence against women, for protective measures and for assistance to victims;

(b) The removal from the Penal Code of the discriminatory concept of an "honest woman", previously applied in certain cases of sexual violence against women;

(c) The introduction, in 2003, of the National Qualification Plan to coordinate public policies on employment for disadvantaged groups, including indigenous peoples, Afro-Brazilians and women;

(d) The National School Food Programme established to provide meals free of charge for 37 million schoolchildren in public schools;

(e) The Brazil Free of Homophobia Programme, which aims to protect and promote the rights of homosexual persons, including their rights to personal security, education, health and work;

(f) Compulsory licensing of HIV/AIDS antiretroviral drugs in order to make them affordable and enable the extension of treatment to all patients;

(g) The National Housing of Social Interest System (SNHIS), whose main task is to urbanize slums, build houses, and improve the housing conditions of low-income groups;

(h) The National Fund for Housing of Social Interest, together with its Managing Council, designed to centralize and manage budgetary resources for programmes under the SNHIS.

115. The Committee notes with satisfaction the broad consultation with civil society organizations in the process of the preparation of the State party's second periodic report.

116. The Committee welcomes the ratification by the State party of the following international instruments:

(a) ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ratified in July 2002);

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (ratified in January 2004);

(c) The WHO Framework Convention on Tobacco Control (ratified in November 2005).

C. Factors and difficulties impeding the implementation of the Covenant

117. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

118. The Committee notes with concern that the Council on the Defence of the Rights of the Human Person has yet to comply with the 1993 Principles relating to

the status of national institutions for the promotion and protection of human rights (the "Paris Principles").

The Committee recommends that the State party adopt the necessary measures, legislative or otherwise, to enable the Council on the Defence of the Rights of the Human Person to fully conform to the Paris Principles. The Committee also urges the State party to ensure that economic, social and cultural rights are fully covered by the mandate of the Council on the Defence of the Rights of the Human Person and that the necessary resources are allocated for its effective functioning.

119. The Committee is deeply concerned about the culture of violence and impunity prevalent in the State party. In this regard, the Committee is concerned about reports that human rights defenders, including those assisting individuals and communities in asserting their economic, social and cultural rights, are threatened, harassed and subjected to violence, frequently by private militias commissioned by private and public actors. The Committee is also deeply concerned about the reports of the failure of the Brazilian authorities to ensure the safety of human rights defenders and prosecute those responsible for committing such acts.

The Committee recommends that the State party take all necessary measures to combat the culture of violence and impunity prevalent in the State party and to ensure the protection of human rights defenders against any violence, threats, retaliation, pressure or any arbitrary action as a consequence of their activities. The Committee recommends that the State party improve its human rights training for law enforcement officials, especially police officers, and ensure that all allegations of human rights violations are promptly and thoroughly investigated by an independent body capable of prosecuting perpetrators.

120. The Committee is concerned at the slow progress in the land reform process notwithstanding the constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land belonging to the indigenous peoples, the State party's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (adopted in 2007) and its ratification of ILO Convention No. 169 (art. 1, para. 1).

The Committee recalls the recommendation made in its concluding observations on the State party's initial report in this regard (E/C.12/1/Add.87, para. 58) and recommends that the State party expeditiously complete the process of demarcation and allocation of indigenous land in accordance with the Constitution and existing laws.

121. The Committee remains concerned about the persistent inequalities in economic conditions and associated social injustice prevailing in the State party between different regions, communities and individuals, despite the positive measures taken by the State party in that regard, such as the Zero Hunger Programme and the increase in the minimum wage (art. 2, para. 2).

The Committee recommends that the State party intensify its efforts to reduce the persisting inequalities and social injustice between different regions, communities and individuals.

122. The Committee notes with concern that there remains a significant discrepancy between the respective life expectancies of the black and white populations despite

the increase in the average life expectancy from 65.6 years in the early 1990s to 71.6 years in 2004. Furthermore, the Committee remains concerned at the significant difference in the poverty levels of black and white population groups, while noting that the overall poverty indicators in the State party improved between 2001 and 2004 (art. 2, para. 2).

The Committee recommends that the State party take all appropriate measures to address the discrepancy between the life expectancies and poverty levels of the black and white population groups through a sharper focus on health and poverty eradication programmes for the former. The Committee requests updated statistical information and data on life expectancy and poverty levels in the State party, disaggregated by region and ethnic group.

123. The Committee notes that illiteracy rates remain a problem in the State party and that inequalities persist in literacy levels between the white and black populations. The Committee is further concerned that the average illiteracy rate is significantly higher in rural areas in the north of the State party (art. 2, para. 2).

The Committee urges the State party to strengthen remedial action to address the problem of illiteracy, particularly in rural areas and in the Afro-Brazilian community.

124. The Committee is concerned that persons with disabilities still suffer discrimination in access to employment despite the quotas for the employment of persons with disabilities in both the public and private sectors (art. 2, para. 2).

The Committee encourages the State party to effectively implement its measures to overcome the obstacles faced by persons with disabilities in accessing the labour market.

125. The Committee is concerned that negative gender roles persist, including the representation of women as sex objects and the traditional stereotypes of women in the family and society, and that these may render women more vulnerable to domestic and other forms of violence. Moreover, although women in general have a higher educational level than men, they are still underrepresented in elected office and administrative and managerial posts, are concentrated in less remunerative and/or part-time employment and receive lower average pay and limited social protection (art. 3).

The Committee urges the State party to enforce its legislation on gender equality, and to take all effective measures, including through the use of media and education, to overcome the traditional stereotypes regarding the status of women in the public and private spheres and to ensure, in practice, equality between men and women in all fields of life, as provided for in articles 2, paragraph 2, and 3 of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights and its general comment No. 19 (2007) on the right to social security.

126. The Committee notes with concern the large numbers of Brazilians employed under inhuman and degrading conditions similar to slavery or subjected to forced labour and other exploitative labour conditions, particularly in forest clearing, logging, and the harvesting of sugar cane, and is concerned that the phenomenon of

forced labour disproportionately affects young men from low-income families (art. 7).

The Committee recommends that the State party:

(a) Take effective measures to end all forms of exploitative labour;

(b) Ensure that violations concerning prohibited labour practices, such as forced labour, are stringently prosecuted;

(c) Provide, in its next periodic report, information on the steps taken to address exploitative labour conditions, as well as the impact of such measures.

127. The Committee notes with concern persisting racial inequalities in access to employment, particularly affecting Afro-Brazilians and indigenous peoples. Furthermore, the Committee is concerned at the disparity in working conditions based on gender and race, despite the State party's initiatives in this area. The Committee also notes with regret the absence of statistical data on the extent to which indigenous peoples living outside settlements enjoy access to employment (arts. 2, para. 2; and 7).

The Committee recommends that the State party continue to strengthen its legal and institutional mechanisms aimed at combating discrimination in the field of employment and facilitating equal access to employment opportunities for women and for persons belonging to racial, ethnic and national minorities. The Committee requests the State party to provide, in its next periodic report, information on the extent to which access to employment is available to indigenous peoples living outside settlements.

128. The Committee is concerned at reports of the murders of union leaders. In addition, the Committee notes with concern that trade union leaders are frequently subjected to other forms of harassment, including intimidation and malicious prosecution, despite the steps taken by the State party to improve the implementation of article 8, paragraph 1, of the Covenant, including the long-overdue legalization of trade union federations (art. 8).

The Committee recommends that the State party take adequate measures to ensure the protection of trade union members and leaders from all forms of harassment and intimidation and thoroughly investigate reports alleging any form of violence.

129. The Committee is also concerned at reports that membership of trade unions frequently results in the blacklisting of trade union members and leaders (art. 8).

The Committee recommends that the State party take effective measures to ensure that employees participating in trade unions are not subjected to blacklisting and that they are able freely to exercise their rights under article 8 of the Covenant.

130. The Committee is concerned at the high proportion of the population excluded from any form of social security, especially the high number of people employed in the informal economy. In particular, the Committee is concerned that the majority of domestic workers are not eligible for any social security benefits and that the provision for persons who have not been able to contribute to the social security system is inadequate. In this regard, the Committee notes that the Continued Benefit

Programme, for instance, is available only to persons with an income of less than 25 per cent of the minimum wage (art. 9).

The Committee recommends that the State party:

(a) Strengthen its measures to provide social security coverage for the economically disadvantaged populations, and that it be made available to persons who are unable to contribute towards the system;

(b) Intensify its efforts to regularize the situation of workers in the informal economy to enable them to benefit from a basic social protection package that may include an old-age pension, a maternity benefit and access to health care.

131. The Committee is concerned that, despite its significant contribution to poverty reduction, the Family Grant Programme (*Bolsa Familia*) is subject to certain limitations (art. 9).

The Committee strongly recommends that the State party:

(a) Take all necessary measures to extend the Family Grant Programme to cover the large number of families that do not receive the benefit;

(b) Improve the efficacy of the Programme by reviewing targeting mechanisms to ensure equal access for the poorest families, particularly indigenous families;

(c) Increase the rent benefit under the Programme in order to enable recipients to enjoy their basic rights to food and housing;

(d) Consider making the benefit universally available in order to ensure a guaranteed minimum income, in particular for the most disadvantaged and marginalized persons and families;

(e) Ensure that the Programme integrates economic, social and cultural rights in line with the Committee's Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).

132. The Committee notes with concern the prevalence of domestic violence against women in the State party (art. 10, para. 1).

The Committee recommends that the State party strengthen measures to combat violence against women and its effects by, inter alia:

(a) Effectively enforcing the existing legislation on domestic violence;

(b) Strengthening public awareness campaigns against domestic violence;

(c) Strengthening support for victims of domestic violence in order to ensure their access to adequate services for recovery, counselling and other forms of rehabilitation.

133. The Committee is concerned at the prevalence of sexual abuse of and violence against children, particularly girls, and at the absence of information on measures taken to address this phenomenon or to assist child victims of abuse (art. 10, paras. 1 and 3).

The Committee recommends that the State party implement its measures against child sexual abuse, especially the abuse of girls, through, inter alia, monitoring, reporting, prosecution as well as through information campaigns targeting parents, communities and children. The Committee also recommends that instances of abuse and neglect of children be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, particularly the protection of their right to privacy. The Committee recommends that measures be taken to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape and other sexual abuse or violence.

134. The Committee is concerned that child labour continues to be widespread in the State party, despite the measures taken and the reduction in the cases of child labour for the 5-9 years age group (art. 10, para. 3).

The Committee recommends that the State party:

(a) Intensify its efforts to combat child labour;

(b) Ensure that child labour is effectively prosecuted;

(c) Take measures to rehabilitate victims of child labour;

(d) Provide, in its next periodic report, information on the steps taken to address the problem of child labour, as well as the impact of such measures.

135. The Committee is concerned that, despite the State party's efforts to address the phenomenon of street children, many children continue to live on the streets where they remain vulnerable to abuse, including sexual abuse, and to other forms of exploitation (art. 10, para. 3).

The Committee recommends that the State party:

(a) Take effective measures to address the root causes of the phenomenon of street children;

(b) Take effective and appropriate measures to ensure that street children have access to education, shelter and health care;

(c) Address the sexual abuse and other exploitation of street children through the prosecution of perpetrators of abuse and the reintegration of victims into society;

(d) Include information, in its next periodic report, on the measures taken to address the situation of street children and any progress made in this respect.

136. The Committee notes with concern that more than 6 million people in the State party live in precarious urban settlements, that there is a large number of homeless people and that significant migration inflows into urban areas have exacerbated the housing shortage. The Committee is further concerned about the absence of adequate measures to provide social housing for low-income families and disadvantaged and marginalized individuals and groups, while acknowledging the State party's efforts in this regard (art. 11, para. 1).

The Committee recommends that the State party adopt additional measures to deal with the problem of homelessness, ensure adequate access to housing for low-income families, disadvantaged and marginalized individuals and groups and improve the water and sanitation facilities of existing housing units.

137. The Committee is deeply concerned that continued deforestation in the State party, albeit at a slower pace, impacts negatively the enjoyment of economic, social and cultural rights under the Covenant (art. 11, para. 2 (a)).

The Committee recommends that the State party take the necessary measures to combat continued deforestation in order to ensure the effective enjoyment of economic, social and cultural rights, especially by indigenous and vulnerable groups of people.

138. The Committee is concerned that the growing number of HIV/AIDS cases registered during the last decade constitutes a serious health problem. The Committee notes with concern that, although treatment with antiretroviral drug therapy is available for free in the State party, the prevalence of HIV/AIDS is still high. In this regard, the Committee notes the higher prevalence of HIV/AIDS among economically disadvantaged communities (art. 12, paras. 1 and 2 (c)).

The Committee recommends that the State party intensify its efforts to control the spread of HIV/AIDS. The Committee further recommends that the State party continue to strengthen measures to address the special vulnerability of marginalized sections of society to HIV/AIDS.

139. The Committee is concerned that maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects marginalized communities, particularly Afro-Brazilians, indigenous women and women from rural areas. Furthermore, the Committee notes that these disparities are attributable, in part, to the inequitable distribution of emergency obstetric care facilities and to the fact that health-care funding fails to pay adequate attention to disadvantaged populations. The Committee is particularly concerned that the majority of maternal deaths are preventable with adequate medical care (art. 12, paras. 1 and 2 (d)).

The Committee recommends that the State party, taking into account the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health:

(a) Strengthen measures to reduce maternal mortality rates;

(b) Increase health-care funding for disadvantaged populations;

(c) Ensure that the people living in poverty have access to free primary health care;

(d) Establish community-based maternal health-care systems and referral systems for obstetric emergencies;

(e) Ensure the equitable availability of health-care facilities, particularly obstetric facilities, among the economically disadvantaged populations;

(f) Ensure that economically disadvantaged populations have equitable access, in particular, to sexual and reproductive health care, taking the necessary measures to provide obstetric services of a high quality;

(g) Provide, in its next periodic report, detailed and updated information, including disaggregated statistical data and indicators, in order to assess the level of progress achieved in that area.

140. The Committee notes with concern that clandestine abortions remain a major cause of death among women (art. 12, paras. 1 and 2 (d)).

The Committee reiterates the recommendation made in its concluding observations on the State party's initial report, namely that the Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortions and to ensure that women do not resort to such harmful procedures. The Committee requests the State party to provide in its next periodic report detailed information, based on comparative data, about maternal mortality and abortion in Brazil.

141. The Committee notes with concern that it is still permissible to promote the use of tobacco through advertising in the State party and that, while the use of tobacco-derived products is banned in publicly accessible areas, smoking is permitted in areas specially designed for the purpose. The Committee notes, however, that the State party has taken important steps to reduce the threat tobacco poses for life, health, the environment and the general population by ratifying the WHO Framework Convention on Tobacco Control and developing public policies to reduce tobacco use (art. 12, para. 1).

The Committee recommends that the State party take measures to ban the promotion of tobacco products and enact legislation to ensure that all enclosed public environments are completely free of tobacco.

142. The Committee is concerned that 43 per cent of children between 7 and 14 years of age do not complete the eighth grade of basic education at the proper age, despite the State party's efforts to ensure the provision of compulsory elementary education free of charge and its programmes to encourage parents and caregivers to enrol young children in primary school (art. 13, paras. 1 and 2 (a)).

The Committee recommends that the State party:

(a) Conduct a study to establish the full range of factors which contribute to children failing to complete primary school at the proper age;

(b) Draw up policies and implement strategies to address the factors identified;

(c) Include, in its next periodic report, information on the measures taken under subparagraphs (a) and (b) above and any progress achieved.

143. The Committee is concerned that there remain significant disparities in access to higher education based on region, ethnic origin and gender. The Committee acknowledges the initiatives taken by the State party to grant wider access to higher education, including the Programme for the Incorporation of Vocational Training into Secondary Education, in the form of Youth and Adult Education (*Proeja*) and the University for All Programme (arts. 2, para. 2; and 13, para. 2 (c)).

The Committee recommends that the State party design and implement strategies to improve access to higher education by disadvantaged groups and

provide, in its next periodic report, information on the impact of measures taken in this regard.

144. The Committee notes with concern that the enjoyment of the right to cultural life under article 15 of the Covenant is largely limited to the educated and/or affluent segments of society in the State party and that cultural resources and assets are concentrated in large cities, with relatively little provision being made for smaller regions and towns (art. 15, para. 1 (a)).

The Committee recommends that the State party take measures to encourage the broader participation of its citizens in cultural life, inter alia, by:

(a) Ensuring the wider availability of cultural resources and assets, particularly in smaller cities and regions, and ensuring, in this regard, special provision through subsidies and other forms of assistance for those who lack the means to participate in the cultural activities of their choice;

(b) Incorporating into the school curricula education on the rights guaranteed under article 15 of the Covenant.

145. The Committee requests the State party to provide, in its third periodic report, detailed information regarding the question whether the rights enshrined in the Covenant can and have been directly applied in its courts.

146. The Committee recommends that the State party provide, in its third periodic report, updated statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

147. The Committee invites the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

148. The Committee requests the State party to disseminate the present concluding observations widely among all segments of society, particularly among State officials, the judiciary and civil society organizations, translate them into all local languages and inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

149. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.4, chap. I).

150. The Committee requests the State party to submit its third periodic report by 30 June 2014.

Cyprus

151. The Committee considered the combined fourth and fifth periodic report of Cyprus on the implementation of the Covenant (E/C.12/CYP/5) along with the written replies to the list of issues at its 9th and 10th meetings, held on 8 May 2009

(E/C.12/2009/SR.9 and 10), and adopted, at its 18th meeting, held on 18 May 2009, the following concluding observations.

A. Introduction

152. The Committee welcomes the submission of the combined fourth and fifth periodic report of the State party, which was prepared generally in conformity with the Committee's guidelines. However, it regrets the late submission of this periodic report and invites the State party to submit its reports from now on in a timely manner. The Committee also regrets that insufficient information was provided on the involvement of civil society organizations and the National Human Rights Institution in the preparation of the State party's report.

153. The Committee notes with appreciation the comprehensive written replies given by the State party to the list of issues, as well as the open and constructive dialogue with the delegation which included a number of representatives from different ministries.

B. Positive aspects

154. The Committee welcomes the important legislations enacted by the State party, namely:

- The 2004 comprehensive anti-discrimination framework
- The 2002 Law on the Equal Pay between Men and Women for the Same Work or for Work of Equal Value, the Law on the Equal Treatment of Men and Women in Employment and Vocational Training and the amendment to the Maternity Law
- The 2000 Violence in the Family Law and the establishment of an Advisory Committee on Family Violence
- The Anti-Trafficking legislation enacted in 2007 which notably creates a national mechanism of cooperation for the identification and protection of trafficking victims

155. The Committee also commends the establishment by Law 74 (I) of 2007 of the Children's Rights Commissioner and the awareness-raising activities which have already been conducted by this mechanism.

156. The Committee welcomes the expansion of the employment sectors available to asylum-seekers as of October 2008 which enhances their opportunities to provide for a decent living for themselves and their families.

157. The Committee takes note with satisfaction of the State party's intention to sign and ratify the Optional Protocol to the Covenant on Economic Social and Cultural Rights.

C. Factors and difficulties impeding the implementation of the Covenant

158. The Committee views the continuous partition of the country as a major difficulty which hinders the ability of the State party to ensure the implementation of the Covenant throughout the country.

D. Principal subjects of concern and recommendations

159. The Committee notes with concern that the National Institution for the Protection of Human Rights has yet to comply with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

The Committee recommends that the State party adopt the necessary measures to enable the National Institution for the Protection of Human Rights to fully conform with the Paris Principles. The Committee also urges the State party to ensure that economic, social and cultural rights are fully covered by the mandate of the National Human Rights Institution and that the necessary resources are allocated for its effective functioning.

160. The Committee is deeply concerned that de facto discrimination persists against third country migrants, Turkish Cypriots and members of national minorities, especially Roma and Pontian Greeks. The Committee is also concerned about the lack of anti-discrimination case law despite the measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination. The Committee notes with concern that Turkish Cypriots continue to face administrative and linguistic obstacles to obtain official documents (art. 2, para. 2).

The Committee urges the Government to intensify awareness-raising campaigns about the anti-discrimination legal framework and ensure that free legal aid is effectively provided to victims in order to pursue their claims before all appropriate courts of the State party. The Committee also recommends that the Government take all appropriate measures to overcome administrative and linguistic obstacles faced by Turkish Cypriots to obtain official documents.

161. The Committee is concerned that the Ombudsman's office has not been provided with sufficient human and financial resources to cope with its additional duties bestowed upon it by its new function as an Anti-discrimination Body (art. 2, para. 2).

The Committee calls upon the State party to increase human and financial resources allocated to the new Anti-discrimination Body in order to ensure an effective functioning of this institution.

162. The Committee notes with regret that in spite of the 2002 law amendment, children of women with displaced person status are still not entitled to a Refugee Identity Card and are only entitled to a Certificate by Descent which does not enable them to access any benefits (arts. 2, para. 2; and 9).

The Committee urges the Government to adopt effective measures to end the discriminatory treatment of children of women with displaced person status.

163. The Committee is concerned at the persisting de facto discrimination against women in the State party, particularly with regard to working and promotion opportunities in employment and to the gender remuneration gap which remains the widest of the European Union. The Committee is also concerned that women are still underrepresented at the decision-making levels in both the public and private sectors (art. 3).

The Committee calls upon the State party to ensure a full implementation of the measures outlined in the National Action Plan on Gender Equality 2007-2013,

in particular those aimed at increasing the level of participation of women in the labour market as well as in the public service and to ensure equal treatment between women and men, including equal remuneration for work of equal value. The Committee also encourages the State party to further strengthen the financial and human resources, as well as the authority and status of the National Machinery for Women's Rights.

164. The Committee is concerned that third country migrants continue to have a limited access to employment and suffer from labour exploitation and social isolation, especially those working in the farming and agricultural industry. The Committee is further concerned that while third country migrants represent a large percentage of the island's population and legally live in the country, the State party has not yet adopted an effective policy for their integration (arts. 6 and 7).

The Committee also urges the State party to ensure strict control over the terms of employment and working conditions of migrant workers by strengthening financial and human resources of the labour inspectorate. The Committee also encourages the State party to consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to adopt and implement an effective integration policy for lawful immigrants.

165. The Committee regrets that the State party has not provided sufficient information or data on the undocumented migrants working in the State party who continue to be subject to discrimination with regard to working conditions and wages (art. 7).

The Committee requests the State party to take effective measures to prevent discrimination against undocumented migrants. It also encourages the State party to promote the regularization of undocumented immigrants so as to enable them to enjoy fully their economic, social and cultural rights. The State party should also provide information on the situation of undocumented migrant workers in its next periodic report.

166. The Committee reiterates its concern (E/C.12/1/Add.28, para. 13) about the precarious situation of domestic workers and considers that the restrictions imposed on them to change their employers increase their vulnerability and prevent them from reporting abusive working conditions (art. 7).

The Committee urges the State party to ensure that the working conditions of domestic workers are adequately regulated and inspected, so that they may enjoy the same legal protection as other workers including with regard to the minimum wage.

167. The Committee is concerned that the minimum wage is not sufficient to provide a decent standard of living for workers and their families (art. 7).

The Committee urges the State party to take the necessary legislative measures in order to ensure that the minimum wage enables workers and their families to enjoy a decent standard of living and that the minimum wage standard is effectively enforced.

168. The Committee is concerned about the administrative obstacles which prevent third country migrants and asylum-seekers from enjoying their economic, social and cultural rights and especially their rights to social security and family reunification.

The Committee is deeply concerned about the number of cases of asylum-seekers with specific needs who are denied access to necessary specialized medical care available to nationals and EU citizens (art. 9).

The Committee calls upon the State party to provide asylum-seekers and third country migrants with free legal aid on their economic, social and cultural rights. The Committee also urges the State party to make sure that asylum-seekers, especially the homeless are no longer imposed conditions not prescribed by law which result in the denial of the rights to social security they are entitled to. The Committee urges the State party to ensure that asylum-seekers with special medical needs have access to specialized medical care, targeted welfare benefits and facilities for the early identification and rehabilitation of the victims of torture.

169. The Committee is concerned that domestic violence against women and children continues to be widespread in the State party and often goes unreported (art. 10).

The Committee urges the State party to adopt an effective strategy to combat domestic violence and to allocate the necessary human and financial resources for the implementation of this strategy. The Committee calls upon the State party to include in its next periodic report information on cases of domestic violence brought to justice and on the sanctions imposed. The Committee also urges the State party to ensure that specialized shelters for victims or those under risk of violence are made available in order to ensure their security as well as their physical and mental integrity.

170. The Committee remains deeply concerned at the extent of trafficking in women for the purposes of sexual exploitation in the State party in spite of the abolition of the system of artiste visa which facilitated trafficking in human beings (art. 10).

The Committee urges the Government to ensure a strict control over the new work permit system, intensify its efforts to bring to justice those involved in human trafficking and strengthen its efforts to protect trafficked women. The Committee also recommends that the national cooperation mechanism between government services and non-governmental organizations stipulated in the new law be strengthened and put into effect.

171. The Committee is also concerned that the State party has not adopted any specific policy to address the substandard housing of third country migrants and asylum-seekers and still considers that employers are responsible for offering suitable housing conditions. The Committee remains concerned at the poor living conditions of some Roma families in spite of the two housing projects set up by the Government (art. 11).

The Committee urges the State party to take remedial action to improve conditions of housing and provide more housing units, housing facilities, credits and subsidies to low-income families and disadvantaged and marginalized groups. In this regard, the Committee reminds the State party of its general comment No. 4 (1991) on the right to adequate housing according to which States parties must demonstrate, inter alia, that they have taken whatever steps are necessary, either alone or on the basis of international cooperation, to

ascertain the full extent of homelessness and inadequate housing within their jurisdiction.

172. The Committee expresses concerns about the lengthy detention of irregular migrants and rejected asylum-seekers in inadequate conditions (art. 11).

The Committee recommends that the State party ensure that asylum-seekers be detained only when it is absolutely necessary and that the time which rejected asylum-seekers and irregular migrants spend in detention is limited to a strict minimum. The Committee also urges the State party to ensure that the conditions of migrants' detention meet United Nations standards.

173. The Committee, recalling its previous concluding observations (E/C.12/1/Add.28, para. 16) expresses concern about the lack of adequate medical facilities for persons suffering from mental disabilities and illnesses who are often transferred to Homes for Aged or to institutions which are unable to meet their special requirements (art. 12).

The Committee urges the State party to adopt the necessary measures, legislative or otherwise, to address the lack of medical institutions for persons suffering from mental disabilities and illnesses as a matter of priority. The Committee also recommends that regular inspections be conducted in order to prevent mistreatment of mentally ill patients.

174. The Committee is concerned about the still limited opportunities for Cypriot Turkish speaking children to receive instruction in their native language (art. 13).

The Committee urges the State party to take all appropriate measures to increase opportunities for Turkish Cypriot children to receive teaching in their mother tongue. The Committee also encourages the State party to strengthen its efforts to ensure that education in school meets the needs of a diverse society and revise school curricula to include a better understanding of the contribution of Cypriot communities and minorities to the State party's history.

175. The Committee expresses deep concern about the circular issued by the 2004 Ministry of Education which request all schools to report to immigration authorities the contact details of the parents of foreign children who enrol for school. The Committee considers that the 2004 circular gives rise to direct or indirect discrimination against migrant children and hinder their access to education (art. 13).

The Committee recalling its general comment No. 13 (1999) on the right to education according to which education must be accessible to all, especially the most marginalized and disadvantaged groups, in law and in fact, without discrimination on any of the prohibited grounds, calls upon the State party to consider withdrawing this circular.

176. The Committee recommends that the State party consider ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

177. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, to translate and publicize them in the national languages of Cyprus and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil

society in the process of discussion at the national level prior to the submission of its next periodic report.

178. The Committee requests the State party to submit its sixth periodic report by 30 June 2014.

Cambodia

179. The Committee on Economic, Social and Cultural Rights considered the combined initial and second to fourth periodic report of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KHM/1) at its 11th to 13th meetings (E/C.12/2009/SR.11-13), held on 11 and 12 May 2009, and adopted, at its 26th meeting, held on 20 May, the following concluding observations.

A. Introduction

180. The Committee welcomes the submission of the combined initial and second to fourth periodic report of the State party, but regrets the 14-year delay in its submission. The Committee also welcomes the written replies to its list of issues (E/C.12/KHM/Q/1), but regrets that some of its questions have remained unanswered.

181. The Committee appreciates the opportunity to hold a dialogue with representatives of the State party and the answers to the questions raised by the Committee. The Committee regrets the absence of experts from the State party and that the information provided was in some cases not sufficiently detailed to enable the Committee's fuller assessment of the level of enjoyment of the rights provided for in the Covenant in the State party.

B. Positive aspects

182. The Committee notes with satisfaction the Declaration of Human Rights contained in chapter III of the State party's Constitution covering many economic, social and cultural rights. The Committee also welcomes the July 2007 decision of the Constitutional Council, that international treaties are part of the national law and that courts should take treaty norms into account when interpreting laws and deciding cases.

183. The Committee welcomes the "Rectangular Strategy" of the Royal Government of Cambodia, and its programmes for strengthening good governance and the advancement of human rights, among others.

184. The Committee notes with satisfaction that, according to the report contained in the Mid-Term Review in 2008 on National Strategic Development Plan 2006-2010, a logging moratorium has been imposed on all existing logging concessions; 2,158 cases of forest crimes have been entered into the case tracking system; 606 offenders have been arrested and sent to courts; and that 215,521 hectares of forest land have been reclaimed from land-grabbing and encroachment.

185. The Committee welcomes the launching by the State party of a project for carbon credits for community forestry under the Clean Development Mechanism

and the Reduced Emissions from Deforestation and Forest Degradation of the United Nations Framework Convention on Climate Change.

186. The Committee notes with appreciation the legislative and other measures adopted by the State party to promote the enjoyment of economic, social and cultural rights, in particular:

- The creation of the Cambodian Human Rights Committee for the purpose of preparing reports on the international human rights treaties ratified by the State party
- The establishment of the Cambodian Landmine Authority, Cambodian Mine Action Centre (CMAC) and the clearing of landmines in the area of 47,650 of which 28,590 hectares is cultivated land with 1,698 villages and communities
- The adoption in 2007 of the Law on Water Management that regulates water supply, irrigation and drainage systems, and surface water storage capacity and underground water use
- The Sub-Decree No. 103 of December 2000 on Birth Registration
- The 2006-2010 Strategic Plan of the Ministry of Labour and Vocational Training, providing special services for persons with special needs such as the youth, persons with disabilities in particular among minority groups
- The establishment of the Second National Plan on Human Trafficking and Sex Trafficking, 2006-2010
- The establishment of the National Action Plan for 2008-2012 on the Elimination of Serious Forms of Child Labour

187. The Committee notes with satisfaction the adoption of measures aimed at promoting the enjoyment by women of their economic, social and cultural rights, including:

(a) The adoption of Guidelines issued by the State Secretariat of Civil Service 2008, instructing all government agencies to apply temporary special measures targeting between 20 to 50 per cent for women among all new recruits;

(b) The establishment of the National Policy and Sector Policy on Gender Issues, as well as the Ministry of Women's annual strategic plan Neary Ratanak II ("Women are the Precious Gem Stone");

(c) The establishment of the National Council for Women in February 2001;

(d) The adoption of the Law on Prevention of Domestic Violence Protection of Victims, in 2005;

(e) The entry into force in August 2007 of the new Code of Penal Procedure;

(f) The 2008-2012 Strategic Plan on Women and AIDS of the Ministry of Health aimed at educating and disseminating information on health issues affecting women, and in particular, reproductive health.

188. The Committee welcomes the ratification, by the State party of:

- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2007

- The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, in 2000

C. Factors and difficulties impeding the implementation of the Covenant

189. The Committee notes the State party's emergence from the isolation and devastation brought about by more than two decades of war, has been a slow and difficult process. The Committee notes, in particular, that the tragic extermination of a large number of the population, including qualified professionals in the economic, social and cultural field, has left the State party bereft of the expertise necessary for the recovery of the country at a more satisfactory pace.

D. Principal subjects of concern and recommendations

190. The Committee regrets that, despite the constitutional guarantees, it has not been established that Covenant provisions can in practice be invoked before or directly enforced by the State party's national courts, tribunals or administrative authorities. In this regard, the Committee notes with concern, the lack of effective remedies for violations of human rights including economic, social and cultural rights, thereby undermining the State party's ability to meet its obligations under the international human rights treaties that it has ratified including the International Covenant on Economic, Social and Cultural Rights.

The Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant, and recommends that the State party take all appropriate measures to ensure the direct applicability of the Covenant provisions in its domestic legal order, including the conduct of training programmes for judges, lawyers and public officials. The Committee also requests the State party to include in its next periodic report detailed information on progress that has been made in this connection and on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights.

191. The Committee notes with concern the absence in the State party, of an independent national human rights institution conforming to the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights.

The Committee strongly recommends that the State party, in accordance with the Prime Minister's proposal of September 2006, expedite its efforts in establishing an independent national human rights institution that conforms to the Paris Principles. The Committee requests the State party to ensure that the envisioned national human rights institution be mandated to protect and promote the provisions of the Covenant, and that adequate financial resources be provided for its independent operations. In this regard, the Committee urges the State party to seek the technical assistance of the OHCHR Cambodia Country Office.

192. The Committee notes with concern the reports on the lack of independence and effectiveness of the judicial system, which hinders the full enjoyment of human rights, including economic, social and cultural rights. The Committee is alarmed by

reports that, despite the efforts undertaken by the State party, corruption continues to be widespread, including in the judiciary.

The Committee urges the State party to adopt its draft Anti-Corruption Law without delay, and to intensify its efforts to modernize and improve the work of the judiciary, including through a revamped Plan for Judicial Reform. The Committee recommends that the State party intensify its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. It also recommends that the State party undertake training and capacity-building programmes for the police and other law enforcement officers, prosecutors and judges, on the strict application of anti-corruption legislation and measures, and to adopt effective mechanisms to ensure transparency in the conduct of public authorities, in law and in practice. The Committee requests the State party to provide in its next periodic report, detailed information regarding progress that has been achieved, and the difficulties encountered, in combating corruption.

193. The Committee is deeply concerned about the most recent FAO global forest survey estimating that the State party has lost 29 per cent of its primary tropical forest cover over the last five years, one of the most serious cases being the continuing destruction of the Prey Long forest in Northern Cambodia. The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected zones, is the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival (art. 1).

The Committee urges the State party to review its policy regarding the conversion of protected zones into economic concessions, by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requests the State party to give, in its next periodic report, detailed information on the progress made in the implementation of these policies.

194. The Committee notes with concern that the 2001 Land Law, which provides for the titling of indigenous communities' communal lands, has not been implemented effectively and that so far, no indigenous community has received any land title. The Committee also notes with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources (art. 1).

The Committee urges the State party to implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law. The Committee emphasizes the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities including mining

and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources. The Committee encourages the State party to consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

195. The Committee notes with concern that, despite the State party's signature of the Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2007, there is no law explicitly prohibiting discrimination against persons with disabilities and that there is no provision, legislative or otherwise, requiring that public buildings and government services should be accessible to persons with disabilities. The Committee is also concerned about reports that persons with disabilities suffer from the inaccurate stereotype that they cannot be productive members of society, resulting in difficulties in obtaining skilled employment (art. 2.2).

The Committee recommends that the State party adopt the draft national law on the rights of persons with disabilities. The Committee requests the State party in its next periodic report to provide detailed information on persons with disabilities, including children and women, with regard to their enjoyment of economic, social and cultural rights.

196. The Committee notes with serious concern that despite legislative and other measures of the State party to eliminate discrimination against women, gender stereotyping persists in Cambodian society, including practices attributed to tradition such as those contained in the *Chbap Srey* (didactic code) which is still part of primary education curriculum and which legitimizes the inferior role of women. This stereotypical attitude recognizes the value of women's work only in the household but not women's work in society, thereby depriving women of their full enjoyment of the Covenant rights (art. 2, para. 2).

The Committee strongly recommends that the State party remove the *Chbap Srey* from the primary school curriculum and to replace it with an educational tool that promotes the value of women both in the home and in society. The Committee also recommends that the State party undertake effective measures to implement its legislation on discrimination against women, and information campaigns and awareness-raising programmes to eliminate the prevailing attitudes and practices that perpetuate the inferior role of women.

197. The Committee notes with concern that, while the prevalence of HIV/AIDS in the State party is declining, it is reported that the number of women being infected by their partners is increasing and that in 2006, 52 per cent of persons living with HIV were females. The Committee also notes with concern that despite the State party's initiatives, there is still limited capacity and a lack of funding and resources directed specifically to programmes focusing on women (art. 2, para. 2, and art. 12).

The Committee recommends that the State party address the negative stereotypes that increase the vulnerability of women to HIV/AIDS and promote the engagement of men in programmes that provide information about sexual and reproductive rights. The Committee emphasizes the importance of sensitizing law enforcement officers and others in positions of authority by offering more effective information programmes for them.

198. The Committee notes with grave concern that, despite the State party's efforts, the levels of violence against women and girls remain high and that the phenomenon tends to be correlated with high levels of general violence with significant gender inequalities. The Committee notes with concern that the incidence of gender-based violence and sexual assault is supported by gender-biased attitudes that blame the female victim and that redress for victims of violence against women is limited. The Committee further notes with concern that legal protection is constrained by ineffective enforcement of the Domestic Violence Law and that criminal prosecution in this regard remains rare (arts. 3 and 10).

The Committee urges the State party to strictly enforce and penalize offenders of the Domestic Violence Law and the penal code, and to fully implement the National Action Plan to prevent violence against women. The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal rights of men and women in the enjoyment of all economic, social and cultural rights, and requests the State party in its next periodic report, detailed information on the progress made in this regard.

199. The Committee notes with concern the high unemployment and underemployment in the State party, particularly among the growing numbers of young people in need of job opportunities and appropriate skills. In this regard, the Committee notes with concern that vocational training is inadequate to meet the demands of a changing economy, and the large gap between the skills supply and labour demand. The Committee also notes with concern the estimates in the United Nations Development Programme/International Labour Organization 2007 report and the draft United Nations Youth Situation Analysis 2009 that 300,000 young people enter the labour market every year and that this figure will increase to 400,000 in the near future, thus making it difficult for the State party to absorb these new job-seekers (art. 6).

The Committee recommends that the State party review its employment policies and develop a strategic employment plan to promote youth employment. The Committee also recommends a review of the training strategy with a view to ensuring technical, vocational education that responds to labour demands, in consultation with workers' and employers' organizations as well as local stakeholders.

200. The Committee notes with concern the persistent inequality in wages for work of equal value for men and women in practice (art. 7).

The Committee strongly recommends to the State party that the principle of equal pay for work of equal value for men and women should be fully and clearly reflected in the legislation, that the legislation should be strictly enforced and that concrete and effective measures be undertaken in this regard.

201. The Committee is concerned that the minimum wage is applicable only in the garments industry to the exclusion of other sectors, and that this minimum wage does not enable garment workers and their families to enjoy an adequate standard of living (art. 7).

The Committee recommends that the State party establish a universal minimum wage that will enable all workers and their families to enjoy an adequate standard of living.

202. The Committee is gravely concerned that the assassination of Chea Vichea, Ros Savannareth and Hy Vuthy — leaders of the Free Trade Union of Workers of the Kingdom of Cambodia, the death threats on other trade union leaders, the failure to investigate the assassinations and death threats and to bring the real offenders to justice, have contributed to the climate of impunity in the country. The Committee notes with concern the report of the ILO mission to the State party conducted in 2008 stating that the Cambodian judiciary is plagued by serious problems of capacity and a lack of independence; that the conviction of Born Samnang and Sok Sam Oeun for the murder of trade union leader Chea Vichea was held in a trial marked by procedural irregularities, including the court's reluctance to entertain evidence of their innocence; that Thach Saveth was sentenced to 15 years in prison for the murder of trade union leader Ros Savannareth; and that no concrete steps had been indicated by the State party to ensure a meaningful and independent review of the outstanding cases. The ILO report also noted with concern that it had received no information on any progress made in the investigation concerning Hy Vuthy, and that there had been a miscarriage of justice in prosecuting the wrong men for the assassinations, while the real offenders remain at large and unpunished (art. 8).

The Committee affirms that the rights of workers as provided for under article 8 of the Covenant can only be exercised in a climate free from violence, pressure or threats of any kind. The Committee urges the State party to take all necessary measures as requested by the ILO Committee on Freedom of Association, to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security or their lives. The Committee requests the State party to seek the technical cooperation facilities of the ILO, notably in the area of reinforcing institutional capacity, as well as with respect to the establishment of labour courts and the revision of the Law on Trade Unions. The Committee also requests the State party, in its next periodic report, to provide a detailed update regarding this concern.

203. The Committee notes with concern that despite the State party's efforts, child labour continues to be a serious problem in the country. The Committee is particularly concerned that the law prohibiting child labour has not been enforced, even in the formal employment sector, and that children are still vulnerable to all the worst forms of child labour, including forced or bonded child labour and commercial sexual exploitation (art. 10).

The Committee urges the State party to intensify its efforts to combat child labour and protect children from all forms of sexual and economic exploitation, including the worst forms of child labour, inter alia through strengthening its national legislation prohibiting child labour in accordance with international standards; increasing the number of labour inspections in order to ensure the respect of its national legislation prohibiting child labour; ensuring the imposition of fines and criminal sanctions to persons making use of illegal child labour; organizing mandatory training for law enforcement officials, prosecutors and judges; and adopting appropriate measures to facilitate recovery and access to educational opportunities for former child workers.

204. The Committee notes with serious concern the reports that an estimated 400 to 800 Cambodian women and children per month are trafficked to foreign countries for sex and that, notwithstanding the various legislative, administrative and policy

measures adopted by the State party to combat trafficking, a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is particularly concerned about the low number of prosecutions and convictions of traffickers (art. 10).

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for purposes of sexual exploitation and forced labour, inter alia by prosecuting and convicting offenders of the law against trafficking, supporting programmes and information campaigns to prevent trafficking, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support for victims.

205. The Committee is deeply concerned that about 36 per cent of the population in the State party lives below the poverty line and are unable to access the WHO standard of caloric intake and that, despite the economic growth in the State party, the national spending on social services such as housing, health and education remains low. The Committee also notes with concern the wide regional disparities in the less developed and economically marginalized provinces, and the significant inequalities in income distribution, especially between urban areas and the rural areas where most of the population live in poverty (art. 11).

The Committee draws the attention of the State party to its statement on "An evaluation of the obligation to take steps to the 'maximum of its available resources' under an Optional Protocol to the Covenant" (E/C.12/2007/1), and recommends that the State party increase its national spending on social services and assistance such as housing, food, health and education so as to achieve, in accordance with article 2, paragraph 1, the progressive realization of the economic, social and cultural rights provided for in the Covenant. The Committee further recommends that the State party allocate sufficient funds for the implementation of its poverty eradication strategy, and ensure the full integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).

206. The Committee notes with serious concern that, according to a 2008 study on food prices, about 12 per cent of households or 1.7 million individuals were food-insecure and most affected by food price increases and that these numbers could increase to 2.8 million during the lean season (art. 11).

The Committee recommends to the State party to strengthen its strategic interventions in response to the alarming situation of increasing food insecurity. The Committee requests the State party in its next periodic report to provide detailed information on the results of these strategic interventions.

207. The Committee is deeply concerned about the continued delay in the adoption of a national housing policy in the State party, and about the large number of urban dwellers living in slums, without adequate housing (art. 11).

The Committee urges the State party to adopt as a matter of priority, a national housing policy that would upgrade poor urban settlements and ensure security

of tenure, with clear institutional responsibilities at the national, provincial and local levels, and adequate financial resources for its effective implementation.

208. The Committee is gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police. The Committee notes with serious concern the example highlighted on 6 May 2009, by the Special Rapporteur on adequate housing, over the possible imminent eviction of "Group 78", who have been involved in a legal battle over their land since 2004, as well as the forced eviction and threats of forced eviction in Sambok Chap in Tonle Bassac, Mittapheap in Sihanoukville, Boeung Kak Lake, Dey Krahorm and Borei Keila in Phnom Penh, among others (art. 11).

The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. The Committee recommends that the State party undertake urgent consultations with all stakeholders in order to reach a definition of "public interest" to complement the 2001 Land Law and develop clear guidelines for possible evictions. The Committee also urges the State party clearly to identify the demarcation of State public land and State private land. The Committee strongly recommends that the State party, as a matter of priority, undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health-care centres and transportation at the time the resettlement takes place. The Committee also draws the attention of the State party to the guidelines on Development-based Evictions and Displacements (A/HRC/4/18), prepared by the Special Rapporteur on adequate housing.

209. The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute housing rights defenders (art. 11).

The Committee urges the State party to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders, including indigenous leaders, peasant activists engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of repression and abuse are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made in preventing and punishing the repressions and abuses.

210. The Committee notes with serious concern that the maternal mortality rate in the State party has remained unchanged and that the State party is not on track to meet its 2015 Millennium Development Goal target and that rates of delivery in health facilities remained low at 22 per cent in 2005, due to obstacles including fees, a shortage of midwives and the fact that most health centres do not operate 24 hours a day, 7 days a week. In addition, the Committee notes with concern that abortion rates are increasing and unsafe abortions are key factors to maternal mortality. The Committee also notes with concern that newborn mortality is still high despite the progress of the State party in addressing infant mortality and mortality of children under 5 years old (art. 12).

The Committee recommends that the State party enforce and monitor the implementation of the Ministry of Health's redeployment and rotation policy to ensure midwives in all health centres countrywide and to provide accommodation and living allowance for midwives. The Committee also recommends that the State party develop maternal "waiting homes" in remote areas, community care for mothers and newborns and establish in-service training for midwives. The Committee strongly recommends that the State party upgrade training and service delivery for the full implementation of the Law on Abortions.

211. The Committee is deeply concerned that the years of turmoil and violence in the State party have resulted in high levels of mental health problems and yet there are no provisions for treatment of people suffering from mental disorders. The Committee notes with alarm that the lack of mental health services often results in patients being incarcerated in prisons, compulsory drug treatment centres or social rehabilitation centres that offer poor mental or social services, and where there have been instances of abuse and where individuals who should be receiving mental health care have been held criminally responsible, convicted and imprisoned (art. 12).

The Committee strongly recommends that the State party consider enacting a mental health law and adopting a comprehensive mental health strategic plan that includes partnership with NGOs and private sector stakeholders. The Committee also recommends that the State party ensure that individuals with mental health problems are not sent to prison.

212. The Committee notes with concern that primary education is not compulsory in the State party, although the primary education net enrolment ratio has increased over the last few years and has expanded to cover most parts of the country. The

Committee notes that primary education continues to be a problem for the various ethnic minorities in the north and east of the country, where there are 20 minority languages spoken by these groups as their mother tongue while the formal education curriculum has only used Khmer as the medium of instruction. The Committee also notes with concern that indigenous communities may lose their culture and language as a result of a lack of education and information in their own languages (arts. 13, 14 and 15).

The Committee recommends that the State party extend the coverage of the Education Law to ensure the right to education to all Cambodian children whose first language is not Khmer.

213. The Committee notes with concern that, while there have been increases in salaries and allowances for teachers in recent years, they still receive lower earnings than a typical civil servant or labourer. The Committee is concerned that the low salary level means that a majority of teachers have to engage in other economic activities such as a second job, resulting in frequent absences from classes thereby affecting the quality of teaching and learning. The Committee notes with concern that low salaries are considered to be one of the reasons for the continuation of the collection of unofficial fees in many schools (arts. 13, 14 and 15).

The Committee recommends to the State party that the civil service reform should put a special emphasis on increasing teacher salaries and incentives, linked to a clarification of teachers' roles, rights and responsibilities.

214. The Committee requests the State party in its next periodic report, to provide detailed information regarding the impact of its bilateral and multilateral trade and investments agreement on the enjoyment of Covenant provisions by the various sectors of both the urban and rural communities throughout the country (art. 2.1).

215. The Committee requests the State party, in its next periodic report, to provide disaggregated data gathered annually, on the various provisions of the Covenant, as a tool for assessing the progressive realization of economic, social and cultural rights (art. 2.1).

216. The Committee urges the State party to ensure that maximum available resources are allocated for the protection and fulfilment of economic, social and cultural rights, especially to the most vulnerable and marginalized individuals and groups. The Committee encourages the State party to foster transparency and accountability to improve effectiveness in the implementation of development programmes funded by international donors, in particular for judicial and institutional reforms and for the improvement of the lives of those living in poverty. In this regard, the Committee draws the attention of the State party to its general comment No. 3 (1991) on the nature of States parties obligations and its statement on "An evaluation of the obligation to take steps to the 'maximum of its available resources' under an Optional Protocol to the Covenant" (E/C.12/2007/1) (art. 2.1).

217. The Committee requests the State party to provide, in its next periodic report, detailed information, including statistics disaggregated by sex and by rural and urban distribution, on the extent of the informal sector as well as the State party's policies and protection measures, if any, that take this sector into account (art. 6).

218. The Committee urges the State party to extend the coverage of the social safety nets by developing targeted measures to address the situation of

disadvantaged and marginalized individuals and groups, in particular the homeless in urban centres, victims of trafficking, children living on the streets or in conflict with the law, and poor people and households. The Committee further urges the State party to consider establishing a universal social assistance programme to guarantee the enjoyment of the right to social security for everyone in the State party (arts. 9, 10 and 11).

219. The Committee requests the State party to provide in its next periodic report detailed information regarding the situation of street children in urban and rural communities and the measures, if any, to provide protection and assistance to them (art. 10).

220. The Committee requests the State party to provide in its next periodic report detailed information on the extent of homelessness throughout the country and the intervention measures and programmes in place as well as their outcomes (art. 11).

221. The Committee recommends that the State party ensure adequate budget allocation for all levels of education especially basic education, and the transparency of the allocation and disbursement system for the implementation of the right to education. The Committee also recommends that the State party expand non-formal education programmes, particularly for out-of-school girls (art. 13).

222. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

223. The Committee also encourages the State party to consider ratifying ILO Conventions No. 81 (1947) concerning Labor Inspection in Industry and Commerce, and No. 102 (1952) concerning Minimum Standards of Social Security.

224. The Committee requests the State party to disseminate the present concluding observations widely among all sectors of society and to inform the Committee on all steps taken to implement them in its next periodic report.

225. The Committee recommends to the State party to seek the assistance of the OHCHR Cambodia Country Office regarding the implementation of these concluding observations, as well as in the preparation of its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

226. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

227. The Committee requests the State party to submit its combined second to fifth periodic report, in line with the Committee's treaty-specific guidelines for reporting (E/C.12/2008/2) by 30 June 2012.

United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories

228. The Committee on Economic, Social and Cultural Rights considered the combined fourth to fifth periodic report of the United Kingdom of Great Britain and

Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/GBR/5) at its 14th, 15th and 16th meetings, held on 12 and 13 May 2009 (E/C.12/2009/SR.14-16), and adopted, at its 26th and 27th meetings held on 20 and 22 May, respectively, the following concluding observations.

A. Introduction

229. The Committee welcomes the submission of the combined fourth to fifth periodic report of the State party, which was generally in conformity with the Committee's guidelines and contained explicit references to the implementation of the Committee's previous concluding observations. The Committee also welcomes the written replies to its list of issues (E/C.12/GBR/Q/5/Add.1), and the open and constructive dialogue held with the delegation of the State party, which included representatives from various government departments with expertise on the subjects covered by the Covenant, including from Scotland and Wales, while noting the absence of representatives from Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories.

230. The Committee notes with appreciation the involvement of the national human rights institutions and some non-governmental organizations in the process of preparation of the State party's report and encourages the State party to establish an institutional framework for future cooperation with national human rights institutions and civil society in the preparation of its reports to the Committee and the follow-up.

B. Positive aspects

231. The Committee welcomes the establishment of national human rights institutions in the State party, namely the Equality and Human Rights Commission, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission.

232. The Committee welcomes the launching of the Green Paper "Rights and responsibilities: developing our constitutional framework" and the ensuing public consultation on a bill of rights and responsibilities.

233. The Committee notes with appreciation the introduction of an equality bill, which aims at streamlining the existing equality legislation and extending protection from discrimination in other areas such as age and sexual orientation, as well as the establishment of a range of institutions to address equality issues such as the Panel on Judicial Diversity and the Panel on Fair Access to the Professions.

234. The Committee welcomes the measures adopted by the State party which contribute to the implementation of the Covenant rights, which inter alia have led to a decreased number of children living in poverty, improved conditions of work, and enhanced overall levels of health. It notes with appreciation the various legislative and policy reforms undertaken, including the Homelessness etc. (Scotland) Act 2003, the Childcare Act 2006, and the National Health Service Constitution (final text published on 21 January 2009).

235. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2005.

236. The Committee acknowledges the State party's commitment to achieve by 2013 the granting of 0.7 per cent of its GDP as official development assistance in accordance with internationally agreed policies.

237. The Committee notes the draft Bill of Rights for Northern Ireland, which includes economic, social and cultural rights which are justiciable, and calls for its enactment without delay.

C. Factors and difficulties impeding the implementation of the Covenant

238. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

239. The Committee is concerned, even though it takes note of the State party's structure of government, with devolved administrations in Northern Ireland, Scotland and Wales, and separate government structures in the Overseas Territories and Crown Dependencies, about the lack of a national strategy to implement the Covenant. It is also concerned about the limited availability of information regarding the implementation of the Covenant in the Overseas Territories and Crown Dependencies.

Bearing in mind that it is the State party which is responsible for the implementation of the Covenant in all its territories, the Committee urges the State party to ensure the equal enjoyment of the economic, social and cultural rights by all individuals and groups of individuals under its jurisdiction, and recommends that the State party adopt a national strategy for the implementation of the Covenant throughout the State party's territories.

240. The Committee reiterates the concern it expressed in its previous concluding observations that, despite the adoption of a wide range of laws with regard to economic, social and cultural rights, the Covenant has still not been incorporated into the domestic legal order of the State party and cannot be directly invoked before the courts. It also regrets the statement made by the State party's delegation that economic, social and cultural rights are mere principles and values and that most of the rights contained in the Covenant are not justiciable.

The Committee urges the State party to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights. The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order. In this respect, the Committee again draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.

241. The Committee reiterates its concern that the State party has not yet adopted a national human rights plan of action, as recommended in the Vienna Declaration and Programme of Action of 1993.

The Committee recommends once again that the State party adopt a national human rights plan of action which includes specific programmes regarding the realization of economic, social, and cultural rights. It also encourages the State party to consult widely with civil society and national human rights institutions in the preparation of the national human rights plan of action.

242. The Committee is concerned about the low level of awareness of economic, social and cultural rights not only among the public at large but also particularly among judges, public officials, police and law enforcement officials, medical practitioners, and other health-care related professionals, despite the State party's assurances to the contrary.

The Committee recommends that the State party take effective measures to increase awareness of economic, social and cultural rights among the public at large as well as among judges, public officials, police and law enforcement officials, medical practitioners, and other health-care related professionals, including by lending adequate support to civil society and national human rights institutions in their efforts in relation to awareness-raising. It also recommends that the State party take steps to improve awareness of the Covenant rights as justiciable human rights and not merely rights as part of the "Welfare State".

243. The Committee continues to be concerned about the de facto discrimination experienced by some of the most disadvantaged and marginalized individuals and groups, such as ethnic minorities and persons with disabilities, in the enjoyment of their economic, social and cultural rights, especially in the fields of housing, employment, and education, despite the measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination. The Committee is also concerned that the proposed equality bill does not provide protection from all forms of discrimination in all areas related to the Covenant rights and will not apply to Northern Ireland (art. 2).

The Committee recommends that the State party take remedial steps to enforce existing legal prohibitions of discrimination and to enact, without delay, a comprehensive anti-discrimination law, guaranteeing protection against discrimination in the enjoyment of economic, social and cultural rights, as stipulated in article 2, paragraph 2, of the Covenant. It also recommends that the State party consider making such comprehensive anti-discrimination legislation applicable to Northern Ireland.

244. The Committee is concerned about the discriminatory impact of some counter-terrorism measures on the enjoyment of economic, social and cultural rights of certain groups in the State party, in particular ethnic and religious minorities, despite the State party's commitment to adopt policies aimed at promoting integration, equal treatment and diversity.

The Committee recommends that the State party ensure that its counter-terrorism measures do not have a discriminatory effect on the enjoyment of the Covenant rights on certain groups in the State party, in particular ethnic and religious minorities.

245. The Committee is concerned that, despite the efforts undertaken by the State party to achieve gender equality in the workplace, inequalities between men and women persist. In particular, the Committee is concerned that progress towards the

eradication of the wage gap between men and women has stalled, especially in the private sector and for persons employed in part-time work (arts. 3, 6 and 7).

The Committee, in line with its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, recommends that the State party conduct a comprehensive review of its policies to overcome gender inequalities. It also recommends that the State party continue intensifying its efforts to enhance equality between men and women in the workplace, particularly with regard to equal pay for work of equal value in all sectors of employment. The Committee encourages the State party to take into consideration the findings of the inquiry to be conducted by the Equality and Human Rights Commission and to ensure that the Equality Bill contains effective provisions aimed at closing the wage gap in the private sector.

246. The Committee notes with concern that parental and paternity leave are not available to the same extent as maternity leave which negatively impacts on equal rights between men and women (arts. 3 and 9).

The Committee recommends that the State party introduce a more flexible scheme for paternity and parental leave, taking into consideration the report "Working Better" by the Equality and Human Rights Commission.

247. The Committee, while acknowledging the rate of employment in the State party, is yet concerned about the substantial number of persons unemployed, in particular the most disadvantaged and marginalized individuals and groups.

The Committee recommends that the State party strengthen its measures to reduce the substantial number of unemployed persons and to counteract the impact of the economic downturn on employment in order to implement fully the right to work, in particular with regard to the most disadvantaged and marginalized individuals and groups. It also calls upon the State party to reinforce its measures aimed at ensuring that persons with disabilities, including those with learning disabilities, have equal opportunities for productive and gainful employment, equal pay for work of equal value, and provide them with improved, expanded and equal opportunities to gain the necessary qualifications, in line with its general comment No. 5 (1994) on persons with disabilities.

248. The Committee is concerned that the unemployment rate of some groups, especially ethnic minorities, continues to be higher than that of other workers, and that they continue to be employed in low paid jobs.

The Committee recommends that the State party take immediate and appropriate measures to reduce unemployment among ethnic minorities and provide them with better employment opportunities.

249. The Committee is concerned about the unsafe working conditions and low wages of some groups of migrant workers whose employers are registered outside the State party, in particular those employed in the fishing industry who enter the State party on transit visas (art. 7).

The Committee encourages the State party to ensure that the conditions of work of all migrant workers comply with the provisions of article 7 of the Covenant and calls upon the State party to take all necessary measures to

investigate the activities of companies employing migrant workers and ensure that employers contravening the law in this regard are prosecuted and sanctioned.

250. The Committee is concerned that pension entitlements do not provide the most disadvantaged and marginalized individuals and groups, including women, persons with disabilities and ethnic minorities, with an adequate standard of living (art. 9).

The Committee encourages the State party to ensure that the State pension reform of the Pension Act 2008, which introduces a new private saving scheme to come into effect in 2012, provides sufficient flexibility to enable especially the most disadvantaged and marginalized individuals and groups to benefit from both schemes and to increase their pension entitlements. It encourages the State party to carry out a targeted information campaign about the pension reforms to make people aware of their rights and responsibilities. It also recommends that the State party provide detailed information, in its next periodic report, on the impact of the pension reform, especially on the most disadvantaged and marginalized individuals and groups.

251. The Committee notes with concern that, despite the steps taken by the State party, domestic violence, and in particular violence against women, is still a widespread problem. It also notes with concern that the number of rape cases which are brought to courts is low. It also remains concerned that corporal punishment of children in the home is not yet prohibited by law.

The Committee recommends that the State party reinforce its measures to combat violence against women. It further recommends that the State party intensify its efforts to raise awareness of the gravity of this offence and the mechanisms available to victims of domestic violence, to improve training for police and law enforcement officials and judges in relation to rape cases, and to increase the support services for victims at the local level. The Committee further recommends that the State party take appropriate measures to ensure that complaints of rape are diligently and impartially investigated and prosecuted without any inherent bias or scepticism towards alleged victims. The Committee reiterates its recommendation that physical punishment of children in the home be prohibited by law.

252. The Committee is concerned that the 1967 Abortion Act is not applicable in Northern Ireland.

The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.

253. The Committee is concerned that the increase of age from 18 to 21 for foreign partners to join their British partners has a discriminatory effect on some groups, in particular ethnic minorities and women (arts. 10 and 2).

The Committee recommends that the State party allow foreign partners from the age of 18 to join their British partners and consider easing restrictions on family reunification in its Immigration Rules in order to comply with the principle of non-discrimination and ensure the widest possible protection of, and assistance to, the family.

254. The Committee is concerned about the length of waiting time of asylum-seekers before taking up employment until their asylum applications are processed, while noting the introduction of additional voucher support to particularly vulnerable asylum-seekers. It is also concerned at the low level of support and difficult access to health care for rejected asylum-seekers (arts. 11 and 2).

The Committee encourages the State party to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed. It also recommends that the State party review section 4 of the Immigration and Asylum Act 1999 on support and provision regulating essential services to rejected asylum-seekers, and undocumented migrants, including the availability of HIV/AIDS treatment, when necessary.

255. The Committee continues to be concerned that poverty and fuel poverty, especially among children, remain widespread in the State party, despite the level of its economic development and the positive steps it has taken. The Committee is also concerned that poverty levels vary considerably between and within regions and cities as well as between different groups of society, with higher poverty levels among ethnic minorities, asylum-seekers and migrants, older persons, single mothers, and persons with disabilities (art. 11).

The Committee urges the State party to intensify its efforts to combat poverty, fuel poverty, and social exclusion, in particular with regard to the most disadvantaged and marginalized individuals and groups and in the most affected regions and city areas. It also calls upon the State party to develop human rights-based poverty-reduction programmes, taking into consideration the Committee's statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10). The Committee also encourages the State party to intensify its efforts aimed at achieving its target of reducing child poverty by half by 2010.

256. The Committee is concerned about the chronic shortage of housing, in particular social housing, for the most disadvantaged and marginalized individuals and groups, such as persons with disabilities, especially in Scotland, or Catholic families in Northern Belfast, in spite of the financial resources provided, and other measures taken, by the State party in this regard. The Committee remains also concerned about the extent of homelessness in the State party (art. 11).

The Committee calls upon the State party, in line with its general comment No. 4 (1991) on the right to adequate housing, to intensify its efforts to ensure that everyone has access to housing and to review its policies and develop effective strategies, including a gender impact assessment, aimed at increasing the levels of affordable housing, including social housing. The Committee also recommends that the State party take into consideration the Homelessness etc. (Scotland) Act 2003 as best practice, especially its provision relating to the right to housing as an enforceable right.

257. The Committee is concerned about the shortage of adequate stopping sites for Roma/Gypsies and Irish Travellers, and reports concerning evictions of groups of Roma from their sites due to the compulsory purchase order of those sites for the organization of the 2012 Olympic Games in London. It is also concerned about the discriminatory effect of the Unauthorised Encampments (Northern Ireland) Order 2005, which makes Roma/Gypsies and Irish Travellers liable to be evicted from

their homes, to have their homes destroyed and then to be imprisoned and/or fined (art. 11).

The Committee recommends that the State party ensure the provision of sufficient, adequate and secure stopping sites for Roma/Gypsies and Irish Travellers. It also recommends that the State party, in the organization of mega-events, ensure the protection of the most disadvantaged and marginalized individuals and groups, which may be disproportionately affected by such events, in line with the Committee's general comment No. 7 (1997) on the right to adequate housing: forced evictions. It also encourages the State party to review the provisions of the Unauthorised Encampments (Northern Ireland) Order 2005 and to provide for suitable accommodation arrangements for Roma/Gypsies and Irish Travellers.

258. The Committee is concerned about the persistent levels of deprivation and inequality throughout Northern Ireland, despite the adoption of the Northern Ireland Equality Impact Assessment (art. 11).

The Committee recommends that the human rights framework, including the Equality Impact Assessment, be effectively implemented in Northern Ireland, particularly in the context of urban regeneration programmes by ensuring the participation of the affected populations and the development of adequate policies and targeted measures to promote substantive equality, provide for improved health care, as well as an increase in skills training and employment opportunities for young people and adequate housing programmes for the poor and, in particular, Catholic families.

259. The Committee is concerned that health inequalities among various social classes in the State party have widened by 4 per cent among men and 11 per cent among women, especially with regard to access to health care, goods, facilities, and services (arts. 12 and 2).

In line with general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee recommends that the State party intensify its efforts to overcome the health inequalities and unequal access to health care, in particular for the most disadvantaged and marginalized individuals and groups. It also urges the State party in this regard to fulfil its commitment to reduce health inequalities by 10 per cent by 2010, measured by infant mortality and life expectancy at birth as benchmarks which the State party has set for itself. It also recommends that the State party gather appropriate disaggregated data on an annual basis of the reporting cycle in this respect with a view to assessing the progress made and providing such information to the Committee in its next periodic report.

260. The Committee is deeply concerned that persons with mental disabilities experience significantly poorer health conditions, including the higher probability to suffer from bowel cancer, breast cancer and much shorter life expectancy, than those without mental health problems (art. 12).

The Committee recommends that the State party take immediate steps to address, as a matter of priority, the poor health conditions for persons with mental disabilities, as well as the regressive measures taken in funding mental health services.

261. The Committee notes with concern that members of the medical profession at all levels are not sufficiently aware of the State party's Covenant obligations. It is also concerned that health-care professionals do not receive sufficient training in relation to the care of persons suffering from dementia and Alzheimer's and that there is a lack of awareness and understanding of the diseases among the public (art. 12).

The Committee recommends that the State party undertake:

(a) Training programmes for doctors and health-care professionals about the State party's Covenant obligations, as well as with regard to the prevention and treatment of dementia and Alzheimer's diseases;

(b) Awareness-raising campaigns about these diseases among the public at large.

262. The Committee is concerned about the increasing suicide rates in Northern Ireland and Scotland, particularly among mental health patients, who face difficulties in accessing the complaints system (art. 12).

The Committee recommends that the State party intensify its efforts to decrease the number of suicides among mental health patients by dealing with the causes of suicide and strengthening the provision of psychological counselling services, as well as training of health professionals on the causes and symptoms of depression and other mental health problems. It also recommends that the State party take all appropriate measures to ensure access of such patients to the complaints system.

263. The Committee is concerned that significant disparities in terms of school performance and dropout rates continue to exist between pupils belonging to ethnic, religious or national minorities, in particular Roma/Gypsies, Irish Travellers, and other students, in spite of the efforts undertaken by the State party to address the social and economic inequalities existing in the field of education (arts. 13 and 2, para. 2).

The Committee recommends that the State party adopt all appropriate measures to reduce the achievement gap in terms of school performance between British pupils and pupils belonging to ethnic, religious or national minorities in the field of education, inter alia, by ensuring the adequate provision of English-language courses for those students who lack adequate language proficiency and avoiding the overrepresentation of minority students in classes for children with learning difficulties. The Committee further recommends that the State party undertake further studies on the correlation between school failure and social environment, with a view to elaborating effective strategies aimed at reducing the disproportionate dropout rates affecting minority pupils.

264. The Committee is concerned that there is still no protection in respect of the Irish language in Northern Ireland, whereas the Welsh and the Gaelic languages are protected by the Welsh Language Act 1993 and the Gaelic Language (Scotland) Act 2005, respectively (arts. 15 and 2).

The Committee recommends that the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act, with a view to preserving and promoting minority languages and cultural heritage, and

invites the State party to provide detailed information on the progress made in its next periodic report.

265. The Committee recommends that the State party place sufficient emphasis on the inclusion of enforceable economic, social and cultural rights when drawing conclusions from the consultations on a possible Bill of Rights and Responsibilities.

266. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.

267. The Committee recommends that the State party give serious consideration to withdrawing its reservations to articles 1, 2, 6, 7, 9 and 10 of the Covenant, especially those that have become obsolete.

268. The Committee recommends that the State party consider giving workers from 18 to 20 years of age the same minimum wage which is given to those beyond the age of 21.

269. The Committee requests data, in the State party's next periodic report, on the effects of the Welfare Reform agenda that are disaggregated on an annual basis, according to the prohibited grounds of discrimination.

270. The Committee encourages the State party to extend its international and regional commitments in the area of social security to the existing advanced instruments and, in this connection, recommends that the State party consider ratifying ILO Convention No. 118 on Equality of Treatment (Social Security) and the European Social Charter (Revised). It also recommends that the State party commit itself fully to all the provisions of ILO Convention No. 102 on Social Security (Minimum Standards) ratified by the State party and, for that purpose, consider withdrawing its reservations to Parts 6, 8 and 9 of the Convention.

271. In line with general comment No. 13 (1999) on the right to education, the Committee encourages the State party to review its policy on tuition fees for tertiary education with a view to implementing article 13 of the Covenant, which provides for the progressive introduction of free education at all levels. It also recommends that the State party eliminate the unequal treatment between European Union member State nationals and nationals of other States regarding the reduction of university fees and the allocation of financial assistance.

272. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible in the languages of the United Kingdom, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

273. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

274. The Committee invites the State party to update its core document in accordance with the requirements of the Common Core Document in the

Harmonized Guidelines on Reporting, recently approved by the international human rights treaty bodies.

275. The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2014.

Forty-third session

Democratic Republic of the Congo

276. The Committee considered the combined second to fourth periodic reports of the Democratic Republic of the Congo on the implementation of the Covenant (E/C.12/COD/5) at its 31st, 32nd and 33rd meetings, held on 3 and 4 November 2009 (see E/C.12/2009/SR.31, 32 and 33), and adopted, at its 51st and 52nd meetings, held on 17 November 2009, the following concluding observations.

A. Introduction

277. The Committee welcomes the submission of the combined second to fourth periodic reports of the State party but regrets the 21 years delay in its submission. The Committee also welcomes the written replies to the list of issues (E/C.12/COD/Q/5/Add.1).

278. The Committee appreciates the opportunity to hold a dialogue with representatives of the State party and the answers to the questions raised by the Committee. However, it regrets the limited composition of the State party's delegation and that the information provided was in many cases not sufficiently detailed to enable the Committee to more fully assess the level of enjoyment of the rights provided for in the Covenant in the State party.

B. Positive aspects

279. The Committee welcomes the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and its two optional protocols. It also welcomes the ratification of International Labour Organization (ILO) Conventions No. 87 (1948) on Freedom of Association and Protection of the Right to Organise; No. 105 (1957) on the Abolition of Forced Labour; No. 111 (1958) on Discrimination in Respect of Employment and Occupation; No. 138 (1973) on the Minimum Age for Admission to Employment; No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and No. 135 (1971) on Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

280. The Committee welcomes the promulgation of a new Constitution on 18 February 2006 which incorporates a wide range of human rights, including a number of economic, social and cultural rights. The Committee also welcomes the important legislation enacted by the State party, namely:

- The Child Protection Code in January 2009
- The Law on Protection of Rights of People Living with HIV/AIDS in July 2008

- Law No. 6/020 of 10 October 2006 and Law No. 08/013 of 5 August 2008 on the organization and functioning of the High Judicial Council
- Law No. 015/2002 of 16 October 2002 on the Labour Code
- Law No. 007/2002 on the mining code

C. Factors and difficulties impeding the implementation of the Covenant

281. The Committee acknowledges the persistent instability and recurrent armed conflicts in some of the provinces in the State party, which pose great challenges to the ability of the State to fulfil its obligations under the Covenant. The Committee considers, however, that impunity for human rights violations and the illegal exploitation of the country's natural resources, including by foreign companies, constitute major obstacles to the enjoyment of economic, social and cultural rights in the State party. The Committee reiterates the primary responsibility of the State party for ensuring security in its territory and protecting its civilians with respect to the rule of law, human rights and international humanitarian law.

D. Principal subjects of concern and recommendations

282. The Committee regrets that the report of the State party and its written replies to the list of issues transmitted to it do not contain detailed factual information or statistics that would enable it to assess how far the rights set out in the Covenant are respected in the State party. The Committee considers such data to be essential for monitoring implementation of the Covenant.

The Committee urges the State party to provide more concrete information in its next periodic report on the practical application of the Covenant, including through disaggregated data and relevant statistics, regarding the implementation of its laws and administrative provisions in the various fields covered by the Covenant.

283. The Committee is concerned that in spite of the fact that international treaties supersede domestic legislation and that several rights enshrined in the Covenant were incorporated into the 2006 Constitution, domestic legislation which is contrary to the Covenant and to the new constitution have not been abrogated and laws giving effect to the provisions of the Covenant are hardly implemented. The Committee is also concerned that the State party has not given full effect to the provisions of the Covenant in the domestic legal order, especially by providing for judicial and other remedies for violations of economic, social and cultural rights.

The Committee urges the State party to ensure conformity of domestic legislation with the Covenant and to formally abrogate all legislation contrary to its provisions. In light of its general comment No. 9 (1998) on the domestic application of the Covenant, the Committee also urges the State party to take immediate steps, including legislative measures, to create and ensure effective domestic remedies for all economic, social and cultural rights and to include in its next periodic report precise information on judicial decisions which give effect to Covenant rights.

284. The Committee regrets that the creation of a national human rights commission which would take into account the Paris Principles relating to the status

of national institutions was not established by the new Constitution of 18 February 2006.

The Committee calls upon the State party to speed up the process of establishment of a national human rights commission and ensure that it conforms to the Paris Principles and is provided with adequate financial and human resources. In light of its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic social and cultural rights, the Committee urges the State party to ensure that the mandate of the national human rights commission fully covers economic, social and cultural rights and that it is empowered to receive individual complaints and conduct investigations. The State party is invited to include details of both the mandate and the principal relevant activities of the national human rights commission in its next periodic report.

285. The Committee expresses deep concern at the state of the justice system, characterized by a severe shortage of judges, lack of adequate resources, political and military interference and high levels of corruption. The Committee is also concerned that in spite of the recent adoption of the Plan of Action for Justice Reform, unless budget allocations to the justice sector, currently receiving only 1 per cent of the State budget, are significantly increased, the reform will fall short. The Committee is further concerned that the High Judicial Council has not been provided with the necessary resources for its effective functioning and that nominations and dismissal of magistrates continue to be decided in violation of the magistrate's statute.

The Committee urges the State party to strengthen its efforts to build an independent, efficient, adequately resourced and accountable justice system. The Committee calls upon the State party to exercise greater political will in fighting impunity by allocating the necessary resources for a prompt and full implementation of the recently adopted Plan of Action for Justice Reform and for the proper functioning of the High Judicial Council. The State party should also urgently create a school for magistrates and promulgate a code of conduct for magistrates. The Committee further calls upon the State party to respect fully the authority of the High Judicial Council regarding the nomination and dismissal of magistrates.

286. The Committee notes with concern that corruption remains endemic in the State party, and that the only State institution in charge of combating corruption, the Professional Ethic Code Observatory (*Observatoire du code de l'éthique professionelle*) lacks resources, independence and credibility. The Committee also regrets that the tripartite agreement signed in February 2008 with South Africa and the United Nations Office on Drugs and Crime (UNODC) to fight corruption has not yet been implemented.

The Committee urges the State party to adopt strong, efficient and time-framed measures to promote good governance and combat corruption. In this respect, the Committee urges the State part to:

(a) Recognize the urgency of eradicating corruption within all government agencies, including police forces at national, provincial and locals levels;

(b) Raise the awareness of politicians, lawmakers, national and local civil servants and law enforcement officers as to the negative impact of corruption;

(c) Train judges, prosecutors, the police and other law enforcement officers on the strict application of anti-corruption laws;

(d) Review its sentencing policy for corruption-related offences;

(e) Ensure that civil servants and military personnel do not resort to extortion from civilians by taking the necessary measures to this end, including payment of adequate salaries;

(f) Ensure the transparency of the conduct of public authorities, in law and in practice;

(g) Implement the tripartite agreement signed with South Africa and UNODC;

(h) Provide in its next periodic report detailed information about anti-corruption initiatives, progress made, and obstacles encountered, in combating corruption.

287. The Committee is seriously concerned that human rights defenders, especially those denouncing corruption, the illegal exploitation of natural resources and supporting victims of sexual violence are routinely exposed to arbitrary detention, threats and attacks by Government security, police forces and armed groups, illegitimate restrictions of their activities, judicial harassment, defamation campaigns and other forms of stigmatization.

The Committee urges the State party to take the necessary action in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms to end the ongoing harassment and persecution of human rights defenders and ensure that those responsible for the threats and attacks are duly prosecuted and punished. The Committee also recommends that the State party engage in a constant dialogue with human rights defenders to implement strategies for the protection and promotion of economic, social and cultural rights throughout the country.

288. The Committee is concerned that, in spite of the adoption of a mining code in 2002 and a mining plan in 2004, as well as the current review of all mining contracts, the illegal exploitation and mismanagement of the natural resources of the State party continue with the involvement of foreign companies. The Committee also notes with great concern that in the resource-rich province of Katanga which is under effective Government control, its extensive mining industry continues to be exploited to the detriment of the rights of people of this province who remain extremely poor and deprived of basic social services and infrastructure. The Committee is further concerned about the lack of transparency surrounding the current revision of mining contracts and the granting of new contracts to foreign companies, such as the exclusive concession granted in the field of uranium extraction (art. 1.2).

The Committee urges the State party to take all appropriate measures to ensure that its natural resources are not subjected to illegal exploitation and

mismanagement; to review without delay the mining contracts in a transparent and participatory way; repeal all contracts which are detrimental to the Congolese people; and ensure that future contracts are concluded in a transparent and public way. The Committee also encourages the State party to implement the Extractive Industries Transparency Initiative (EITI) for which it has been a candidate country since 2008, in particular as regards the regular disclosure of revenues received from oil, gas and mining to a wide audience in a publicly accessible, comprehensive and comprehensible manner. The State party should also adopt appropriate measures to control the export of minerals and to impose drastic sanctions on those involved in the illicit trade in natural resources. The Committee further calls upon the State party to ensure that revenues derived from the mining sector are allocated for the development of the province of Katanga and that its inhabitants are provided with basic social services and infrastructure so that their living conditions may be improved.

289. The Committee is concerned that despite the adoption of the Forestry Code and a moratorium on concessions, illicit trade of wood and abusive exploitation of the country's forests continue to adversely affect the ecology and biodiversity and undermine the rights of indigenous populations, especially pygmies, to live in their ancestral lands and manage their forests according to their traditional practices. The Committee also expresses concern that representatives of indigenous communities were not invited to take part in the second session of the inter-ministerial commission in charge of reviewing illicit logging contracts, although the session was devoted to the signature of contracts between local authorities and logging companies (art. 1.2).

The Committee urges the State party to enforce the moratorium on concessions until the mapping and zoning exercise is completed and to ensure that future forest concessions do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources, and that the benefits thereof contribute to their poverty alleviation. The State party should ensure that forestry projects are centred on advancing the rights of forest-dependent peoples and conducted only after comprehensive studies are carried out, with the participation of the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned activities. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries.

290. The Committee is concerned that land-related disputes which were at the heart of the Ituri conflict and continue to be the source of conflicts in many provinces, remain unresolved and therefore may lead to new inter-ethnic confrontation. The Committee is especially concerned that the consultation process to revise the Land Law, although announced in the State party report, has not yet formally begun and that no other initiative is foreseen to prevent future land dispute. The Committee expresses further concern at the numerous cases of peasants expelled from their land due to mining operations in Kijiba, Kaposhi, Ngaleshi, Kifunga and Chimanga (Katanga) (art. 1.2).

The Committee calls upon the State party to urgently launch a consultation process with a view to revising the current Land Law and securing land tenure. Until such a law is adopted and implemented, the State party should take all the necessary measures in consultation with local and regional authorities to

solve the existing land conflicts and prevent further disputes. As part of its efforts, the State party should envisage financially supporting the sensitization and mediation activities of the Land Commission established in February 2008 in the province of Ituri and creating community-based land commissions in the other provinces. The State party should also inquire into the expulsion of farmers in Katanga and provide them with compensation and alternative locations for agriculture.

291. The Committee expresses serious concern that despite the international development aid that has been provided, no sustainable institutional framework for its absorption and utilization exists in the State party. The Committee is also concerned about the continuous decrease over the past decade of the resources allocated to social sectors, notably health and social protection, whereas budgetary allocations to defence and public security have increased considerably to reach 30 per cent of State expenditures. The Committee is even more concerned that only a small part of the low budgetary allocations to the social sectors are actually disbursed. The Committee considers that mismanagement of international cooperation aid and unbalanced budgetary allocations constitute serious breaches in the obligations of the State party under article 2.1 of the Covenant (art. 2.1).

The Committee draws the attention of the State party to its statement entitled "An evaluation of the obligation to take steps to the 'maximum of its available resources' under an optional protocol to the Covenant" (E/C.12/2007/1), and recommends that the State party which is currently voting the annual 2010 budget substantially increase its national spending on social services and assistance such as housing, food, health and education, so as to achieve, in accordance with article 2, paragraph 1, the progressive realization of the economic, social and cultural rights provided for in the Covenant. The Committee also urges the State party to use a human rights-based approach in the elaboration of the State budget and the utilization of international development aid with clear strategic budgetary lines for the most disadvantaged and marginalized groups and provinces. It further encourages the State party to foster transparency and accountability to improve effectiveness in the implementation of development programmes funded by international donors.

292. The Committee is concerned that while pygmies continue to suffer extreme forms of societal marginalization, in particular with regard to their access to identity documents, education, health and employment and in spite of repeated calls by human rights bodies to address the situation, the State party has still not taken the necessary measures to end these human rights violations. The Committee also expresses deep concern that in war zones pygmies have been and continue to be subjected to mass rapes, extermination and persecution which are committed with total impunity (art. 2.2).

The Committee urges the State party to ensure that racial discrimination is criminalized as a specific offence and that perpetrators of acts of racial discrimination and crimes against pygmies are brought to justice. The Committee also urges the State party to train public officials and organize campaigns to enhance public awareness in matters of discrimination against pygmies.

293. The Committee, while noting the new provisions of the labour code concerning people with disabilities, regrets that insufficient information was provided in the State party report as to the concrete situation of persons with disabilities and the relevant laws which apply to them, including safeguards against abuse and neglect. The Committee notes with concern that in the absence of appropriate social services, most adults with disabilities have to resort to begging and their children are excluded from access to education and health care (art. 2.2).

The Committee draws attention to its general comment No. 5 (1994) on persons with disabilities and urges the State party to adopt comprehensive anti-discrimination legislation that provides persons with disabilities with judicial and social-policy programmes which enable them to live an integrated, self-determined and independent life. The Committee also urges the State party to consider ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. The State party is invited to provide detailed information in its next periodic report on persons with disabilities, including children and women, with regard to their enjoyment of economic, social and cultural rights.

294. The Committee is concerned that the State party is not aware of the widespread discrimination against persons with albinism. The Committee also expresses deep concern that persons with albinism have been killed and their organs used or trafficked for witchcraft ceremonies (art. 2.2).

The Committee urges the State party as a matter of urgency to ensure the timely and efficient conduct of investigations and prosecution of those responsible for the killings and mutilation of persons with albinism. The Committee also urges the State party to apply itself to combating the discrimination against persons with albinism which takes place in the State party, and to this end, to establish close cooperation with and financially support the work of the associations promoting and protecting the rights of people with albinism, and conduct awareness-raising campaigns to combat superstitious beliefs which are detrimental to their well-being.

295. The Committee notes with concern that despite constitutional provisions guaranteeing the principle of equality between women and men, provisions that discriminate against women, such as the ones contained in articles 444, 448, 449 and 450 of the Family Code remain in force in spite of repeated calls from human rights bodies to repeal them. The Committee is also concerned that in spite of the high level of gender-based violence in the State party, priority has not been given to tackling this problem, as reflected by the slow process of drafting the law on gender equality and revising the Family Code; the limited number of women in public life and decision-making positions; and the persistent inequality in wages between men and women. The Committee is further concerned about the persistence of harmful traditional practices such as dowry payments, levirate marriage, polygamy, forced and early marriage, and female genital mutilation (art. 3).

In light of its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3) reminds the State party that this is an immediate obligation of States parties. The Committee considers that repealing all laws which discriminate against women requires firm political will and therefore urges the State party to proceed without any further delay to their repeal. The State party should also

speed up the process of adoption of the law on gender equality, enact legislation prohibiting traditional practices that are harmful to women and girls and raise the minimum age of marriage for girls to 18 years of age. The Committee further recommends that the State party adopt measures without delay to modify or eliminate traditional practices and stereotypes that discriminate against women, make the promotion of gender equality an explicit component of all its national reconstruction and development strategies, undertake concrete measures to increase the number of women in decision-making positions and enforce the principle of equal pay for work of equal value.

296. The Committee notes with concern that in spite of repeated requests made by the ILO Committee of Experts on the Application of Conventions and Recommendations, the State party has not yet repealed legislation which allows the imposition of forced labour on detainees (Ordinance No. 15/APAJ of 20 January 1938) in the context of national food production programmes (Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748/BCE/AGRI/76 of 11 June 1976), and as a means of levying taxes (sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions). The Committee is also concerned that the obligatory civic work programme known as *Salongo* is still widely practised (art. 6).

The Committee refers the State party to its general comment No. 18 (2005) on the right to work and urges it to repeal legislation which is not in line with the provisions of article 6 of the Covenant and to immediately put an end to the obligatory civic work programme.

297. The Committee expresses concern at the insufficient measures taken by the State party to address the situation of thousands of artisanal miners who work in harsh conditions, without employment contracts, protection, adequate clothing, equipment or training provided to them by trading companies. The Committee is also concerned that whereas neither the Government nor the trading companies which directly benefit from the work of artisanal miners accept responsibility for their lives and welfare, large sums of money are extorted from artisanal miners by the authorities, customs and police forces, as well as by the associations which are supposed to protect their interests. The Committee further notes with concern that the labour inspectorate is under-resourced, subject to external influence and therefore unable to exercise effective control over miners' working conditions (art. 7).

The Committee calls upon the State party to continue to revise mining contracts and to adopt a clear strategy, with the participation of trading companies, to prevent accidents in mines. The State party should also ensure that trading companies provide miners with an employment contract and fulfil their obligations with regard to safety and health in the workplace as defined in the Labour Code. The Committee urges the State party to strengthen its labour inspectorate, lift the ban on inspection visits in force since 1994 and ensure that independent investigations into all reported cases of deaths and injuries in mines and into cases of extortion of money from the miners are duly sanctioned. It also recommends the State party to consider ratifying ILO Convention No. 155 (1981) on Occupational Safety and Health and the Working Environment and its accompanying protocol, as well as Convention No. 176 (1995) on Safety and Health in Mines.

298. The Committee expresses concern about the numerous cases of harassment, arrest and detention of trade union officials, the obstruction of trade union activities in certain enterprises and the creation of sham unions in the private sector, in particular the natural resources industry, to discourage the creation of genuine unions.

The Committee urges that anti-trade union actions be duly investigated and that those responsible for such actions be brought before the courts and punished in accordance with the law. The Committee also calls upon the State party to take appropriate measures to ensure freedom to form and join trade unions, prevent interference in the management and operation of trade unions and remove restrictions to the right to establish unions in the civil service and in decentralized administrations. The Committee affirms that the rights of workers as provided for under article 8 of the Covenant can only be exercised in a climate free from violence, pressure or threats of any kind (art. 8).

299. The Committee notes with concern that although the State party recognizes the malfunctioning and extremely limited coverage of the social security system, insufficient measures have been taken to address the situation, as reflected in the very slow process of adoption of a social security code and the lack of concrete measures taken to provide protection and assistance to the most disadvantaged and marginalized groups (art. 9).

The Committee, while recognizing the difficulties of the State party, considers that budgetary constraints should not be invoked as the only justification for the lack of progress towards the establishment of a social security system. The Committee urges the State party to speed up the process of adoption of a social security code and the establishment of a sustainable social security system. The Committee also calls upon the State party to take all necessary measures to provide social assistance to those who are presently without any protection, with a view to enabling persons and families in need, including informal sector workers and the most disadvantaged and marginalized individuals and families, to live life in dignity.

300. The Committee is gravely concerned about the high levels of sexual violence and atrocities, including ethnically motivated rapes committed collectively and publicly by all armed groups including by the Congolese Army (FARDC) and the National Congolese Police (PNC), in violation of international human rights and humanitarian law. The Committee regrets that the two laws on sexual violence adopted in 2006 have so far been ineffectively implemented and that perpetrators continue to enjoy impunity. The Committee is alarmed that men accused of rape are often granted bail or released as a result of out-of-court settlements or corrupt practices, while survivors of sexual violence end up rejected by their families, without health care, socio-economic reintegration support or compensation being provided to them by the State party (art. 10.1). The Committee further notes with concern that impunity also prevails for sexual abuses which are increasingly committed outside conflict zones, as well as for domestic violence which is widespread in the State party (art. 10.1).

The Committee urges the State party to urgently implement the comprehensive strategy against sexual violence endorsed by the Government in April 2009 and to allocate the necessary human and financial resources for this strategy to reach its four main goals, namely: combating impunity, protection and

prevention, security sector reform and provision of a multisectoral response for survivors. The Committee urges the State party to ensure without any further delay that consistent and sustainable budget allocations are made to provide survivors of sexual violence with immediate compensation, psychological support and health care.

The Committee also urges the State party to address sexual abuse in the wider context of gender-based violence and to take all appropriate measures to combat domestic violence and support gender empowerment.

301. The Committee is concerned that trafficking of women and children for sexual and commercial exploitation is widespread and on the increase. The Committee is also concerned that men, women and children continue to be regularly abducted by armed groups, including FARDC, and detained in the State party or forcibly transported to neighbouring countries for the purpose of forced labour or sexual slavery. The Committee is further concerned that existing laws do not prohibit all forms of trafficking and that the State party has still not adopted any measures aimed at combating trafficking (art. 10.3).

The Committee urges the State party to criminalize all forms of trafficking in human beings, convict perpetrators, adopt effective measures against trafficking and the sexual and commercial exploitation of women and children, and provide them with physical and psychological recovery and social reintegration measures, including provision of shelter, counselling and medical care.

302. The Committee expresses grave concern that all parties to the conflict, including FARDC, are still recruiting children into their ranks and that thousands of children currently remain involved in armed conflict and are subjected to atrocities by military groups. The Committee further notes with concern that insufficient efforts have been made to bring to justice those identified as recruiting and using child soldiers and to provide children, and especially girls, with protection and community reintegration programmes (art. 10.3).

The Committee urges the State party to immediately release all children serving in FARDC and detained in military facilities and to bring to justice all members of FARDC who have been recruiting, using and detaining child soldiers. The Committee also calls upon the State party to fulfil its obligations to provide demobilized boys and girls with appropriate assistance for their physical and psychological recovery and their social reintegration.

303. The Committee expresses grave concern at the high levels of violence, including sexual violence, suffered by children in the State party, and especially girls, street children, children accused of witchcraft, albinos, orphans, children with disabilities, indigenous children and children in detention. The Committee also expresses deep concern that children are sexually and economically exploited throughout the country on a massive scale (art. 10.3).

The Committee urges the State party not to tolerate any longer violence against children and to fully implement the Child Protection Code adopted in January 2009. The Committee recommends the adoption of concrete measures to identify and protect the most disadvantaged and marginalized children. The Committee further recommends the State party to continue to seek the

assistance of the United Nations Children's Fund (UNICEF) and ILO in this respect.

304. The Committee notes with grave concern that although the State party has adopted a Poverty Reduction Strategy, 75 per cent of the population continues to live in extreme poverty. The Committee is also concerned about the continuous decline in the standard of living and life expectancy. The Committee expresses its concern that 83 per cent of the population have no access to safe drinking water, while 70 per cent have no access to hygienic sanitation facilities and only 1 per cent of the population have access to electricity, owing mainly to the mismanagement of the Inga Hydroelectric facilities (art. 11).

The Committee recommends that the State party allocate sufficient funds for the implementation of its Poverty Reduction Strategy, and ensure the full integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). The Committee also urges the State party to reallocate international development aid and other resources from non-priority sectors to priority sectors and to ensure that international development aid is utilized for the progressive realization of the rights of the Congolese to an adequate standard of living.

305. The Committee expresses concern at the high level of acute and chronic malnutrition and the vulnerability of the population to food shortages in spite of the impressive agricultural potential of the State party. The Committee notes with concern that out of 6.7 million hectares of arable land in the country, only some 1.1 million are currently under permanent cultivation (art. 11), that fisheries and livestock rearing potential remains under-exploited and that although recognized as a top priority by the State party, the agriculture sector only received 3.5 per cent of the State budget in 2008.

The Committee urges the State party to strengthen its efforts to revive the country's rural economy and achieve food and nutrition security, notably by adopting an agricultural code and a programme on food security. The State party should accord effective priority to the agricultural sector by allocating the necessary resources to rehabilitate the transport and agricultural infrastructure, strengthen the capacity of communities through training, improve access to agricultural inputs and microcredit to boost agricultural, fishing, livestock rearing, and handicrafts activities, and to improve agricultural techniques.

306. The Committee is concerned that in spite of the poor and unhealthy housing conditions throughout the State party and the demographic explosion in the cities, no budget allocations have been made over the last 30 years to improve the housing conditions of the population and the State party has still not adopted any comprehensive housing policy. The Committee is also concerned about the precarious situation of more than 300 families who were forcibly expelled from their homes in the locality of Kasa Vubu in Kinshasa in March 2009 by order of the Land Ministry without having received any adequate compensation or being offered any alternative housing (art. 11.1).

The Committee urges the State party to adopt as a matter of priority, a national housing policy that would upgrade poor urban settlements and ensure security of tenure, with clear institutional responsibilities at the national, provincial and local levels, and adequate financial resources for its effective implementation. The Committee also urges the State party to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its general comment No. 7 (1997) on the right to adequate housing (article 11 (1) of the Covenant): forced evictions. The Committee also urges the State party to guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health-care centres and transportation at the time the resettlement takes place. In this regard, the Committee also draws the attention of the State party to the guidelines on development-based evictions and displacements prepared by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18).

307. The Committee expresses grave concern at the increasing and alarming number of prisoners, most of them awaiting trial, who continue to die in the overcrowded prisons of the State party due to lack of food and health care, inhuman sanitary conditions and torture. The Committee is seriously concerned that while regularly and unanimously denounced, this situation has so far not received the attention it requires from the State party which currently provides funds to only one prison in the entire country. The Committee further notes with deep concern that in spite of the decision of the President in 2006 to close illegal jails, security services continue to operate numerous illegal detention facilities to which families, international and non-governmental organizations are denied access (art. 11.1).

The Committee urges the State party to urgently undertake a census of the prison population and allocate the necessary funds to provide food for the detainees. The Committee also calls upon the State party to provide every prison with a reasonable budget and reduce prison overpopulation, notably by using alternatives to preventive detention and releasing all prisoners still detained in violation of the international standards. The State party should also close all illegal detention facilities without further delay, and ensure access for international and non-governmental organizations to all places of detention.

308. The Committee expresses concern at the precarious situation of the 1.7 million internally displaced persons (IDPs) in the State party who rely exclusively on assistance provided by international humanitarian organizations. The Committee notes with concern that due to continuous insecurity in the eastern provinces of the State party, IDPs have no other choice but to hide in the forest where they are deprived of any assistance. The Committee also notes with deep concern that IDPs are regularly victims of gross human rights and humanitarian law violations committed by all factions engaged in the fighting, including FARDC.

The Committee urges the State party through its Ministry for Solidarity and Humanitarian Affairs to assume its obligations to protect and respond to the needs of internally displaced persons.

309. The Committee is deeply concerned that 4 million people have died since the conflict began and that most deaths were caused by preventable and treatable illnesses. The Committee expresses grave concern that most of the health districts

are no longer functioning, leaving 37 per cent of the population totally deprived of any form of health care. The Committee is also concerned that when structures do exist, due to user fees health care is not readily accessible resulting in alarming levels of infant, under-five and maternal mortality and low vaccination coverage (art. 12).

The Committee urges the State party to fulfil its commitment to allocate 15 per cent of its budget to building a sustainable health system as announced in its report to the Committee. The Committee also urges the State party to provide detailed information in its next periodic report on the concrete results achieved through the programmes that the State party is currently implementing.

310. The Committee notes with concern that in spite of the significant increase in budgetary allocations to the education sector, access to primary schools remains fee-paying and therefore unaffordable for many. The Committee also notes with concern that school enrolment of children, especially girls, remains at an extremely low level and that the low level of birth registration in the State party continues to be a major obstacle to the enjoyment of the right to education. The Committee is further concerned that only a small part of the State budget allocated to education is actually being spent on education, especially in priority areas such as educational infrastructure and decent salaries for teachers.

In light of its general comment No. 11 (1999) on plans of action for primary education (art. 14), the Committee reminds the State party that article 14 of the Covenant requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all. The Committee also urges the State party to take all appropriate measures to ensure that births are registered throughout its territory and that the funds allocated to education are actually spent on priority areas such as educational infrastructure and teachers. The Committee requests the State party to provide precise information in its next periodic report on the measures adopted to achieve free and compulsory primary education for all children.

311. The Committee is deeply concerned that the systematic and abusive exploitation of forest resources in the State party has negatively affected the lands and the way of life of numerous indigenous peoples, especially the pygmies living in the Province of Equateur, impeding the enjoyment of their rights as well as their material and spiritual relationship with nature and, ultimately, their own cultural identity.

The Committee recommends that the State party adopt legislation and measures to recognize the status of pygmies and other indigenous peoples living in the State party, in order to protect their ancestral lands as well as their own cultural identity.

312. The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, recently approved by the international human rights treaty bodies.

313. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

314. The Committee invites the State party to consider extending an invitation to the Special Rapporteur on adequate housing, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in order to benefit from their expertise in developing policies which would address the concerns of the Committee.

315. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, including among State officials, the armed forces, the judiciary and civil society organizations, and to inform the Committee of the steps taken to implement them in its next periodic report.

316. The Committee recommends that the State party seek the assistance of the United Nations Joint Human Rights Office in The Democratic Republic of the Congo (UNJHRO) regarding the implementation of these concluding observations, as well as in the preparation of its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

317. The Committee requests the State party to submit its fifth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2013.

Chad

318. The Committee on Economic, Social and Cultural Rights considered the combined initial and second and third periodic reports of Chad on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/TCD/3) at its 35th meeting held on 5 November 2009 (E/C.12/2009/SR.35), and adopted the following concluding observations at its 53rd meeting held on 18 November 2009.

A. Introduction

319. The Committee regrets that, in the absence of a delegation from the State party, it was unable to follow its usual practice of considering the reports of States parties in the presence of representatives of the State concerned. The Committee applied rule 62, paragraph 3, of its rules of procedure, which stipulates that once a report has been scheduled for consideration by the Committee, the Committee will proceed with the examination of the report at the time scheduled, even in the absence of a representative of the State party. The Committee wishes to remind the State party that dialogue is a key component of the consideration of the report and provides a unique opportunity for the Committee and the State party to hold constructive, in-depth discussions which, together with the report submitted by the State party, the written replies to the list of issues and other information received, allow the Committee to assess the progress made and to indicate to the State party the areas where further efforts are needed. The Committee wishes to draw the State

party's attention to the opportunity that it has missed to introduce its report, present supplementary information or updates and provide the necessary clarifications and answers to the questions put by Committee members. The Committee deeply regrets that its task of evaluating the implementation of the Covenant in the State party as objectively as possible should have been so severely compromised by the State party's failure to attend the meeting to consider its report, and urges the State party to be present during the consideration of its next report. That having been said, the Committee takes note of the fact that a delegation from the State party came on 9 November 2009 to explain, after the fact, why the delegation had not been able to be present during the Committee's consideration of its report.

320. The Committee welcomes the State party's submission of the document containing its combined initial and second and third periodic reports (E/C.12/TCD/3), but regrets that Chad waited 12 years to submit it and that the report does not contain sufficiently detailed information to enable the Committee to assess the degree of enjoyment of Covenant rights in the State party. It also welcomes the written replies to the list of issues (E/C.12/TCD/Q/3/Add.1), but regrets that the replies to a number of points merely repeat the information provided in the report.

B. Positive aspects

321. The Committee welcomes the establishment of the National Committee for the Elimination of Illiteracy.

322. The Committee notes with satisfaction that the State party has adopted Act No. 007/PR/07 on the protection of disabled persons, which recognizes that disabled persons have the same rights as those enjoyed by any Chadian citizen under the Constitution, and that the Department for Disabled Persons of the Ministry for Social Action, Solidarity and the Family is mandated to promote, in the legal domain, the realization of all the rights accorded to this category of persons.

323. The Committee notes with satisfaction the efforts made by the State party to combat poverty, including the project of the Ministry for Social Action, Solidarity and the Family on poverty reduction and the advancement of women.

C. Factors and difficulties impeding the implementation of the Covenant

324. The Committee notes that for some 30 years the State party has been beset by institutional and political crises characterized by armed uprisings and intercommunal conflicts, which have had and continue to have disastrous consequences for the situation in the country in general and for the enjoyment of economic, social, cultural, civil and political rights in particular. The Committee is particularly concerned about the impact of the Darfur crisis and the mass population displacements in eastern Chad, the still fragile peace in the interior and along the borders and the high and ever increasing incidence of poverty.

D. Main areas of concern and recommendations

325. The Committee regrets that the report contains a limited quantity of disaggregated statistical information, taken from the 1993 census, which does not allow the Committee to gauge how far the Covenant is applied in the State party.

The Committee recommends that, in its next periodic report, the State party provide statistical data on the enjoyment of economic, social and cultural rights, disaggregated by sex, age and rural/urban population, and on refugees/internally displaced persons, persons living with HIV/AIDS and persons with disabilities.

326. While taking note of article 222 of the Constitution of 31 March 1996, as amended by Constitutional Act No. 08/PR/2005 of 15 July 2005, under which treaties or agreements take precedence over laws, the Committee is concerned that the State party has asserted, by contrast, that there is no provision at the national level for applying the provisions of the Covenant and that the Committee has not been given any examples of jurisprudence in which the provisions of the Covenant have been directly applied by the State party's courts.

The Committee urges the State party to strengthen its efforts to give full effect to the Covenant in domestic law and to provide information on relevant jurisprudence in its next periodic report. In this respect, the Committee draws the attention of the State party to general comment No. 9 (1998) on the domestic application of the Covenant. The State party should ensure that judicial training takes full account of the justiciability of Covenant rights and should take measures to increase awareness of the right to invoke the Covenant before the courts.

327. The Committee regrets that the National Human Rights Commission is not fully operational and is not in conformity with the Paris Principles and that the State party has not replied to the question of whether the promotion and protection of economic, social and cultural rights fall under the Commission's mandate.

The Committee recommends that the State party take the necessary steps to ensure that the National Commission on Human Rights meets the requirements of independence and autonomy set out in the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134). The Committee also recommends that the State party give the Commission a specific mandate to deal with violations of economic, social and cultural rights.

328. The Committee notes with concern that the State party has yet to take firm and effective measures to combat corruption and impunity, even though the State party has experienced high levels of corruption. It regrets the lack of information on prosecutions and sentences for corruption.

The Committee recommends that the State party train the police and other law enforcement officers, as well as prosecutors and judges in the strict application of anti-corruption laws, that it conduct awareness-raising campaigns and that it require the public authorities, in law and in practice, to operate in a transparent manner. It also recommends that the State party intensify its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. The Committee requests the State party to provide detailed information in its next periodic report about the progress made in combating corruption and impunity and any obstacles encountered.

329. The Committee notes with concern, in the light of the information made available to it, that the justice system suffers from widespread corruption, is often

subject to executive influence and is underfunded. It also notes with concern that judicial decisions are in some cases not applied by the Government.

The Committee urges the State party to take effective measures to guarantee the independence of the judiciary and to ensure that this principle is fully implemented and promoted. It also requests the State party to ensure that judicial decisions are actually implemented. The State party is invited to conduct training for judges and lawyers on economic, social and cultural rights.

Article 2, paragraph 2

330. The Committee is concerned about the adverse effects of the exploitation of natural resources, particularly mining operations and oil exploration in indigenous territories, which is carried out in violation of the right of indigenous people with regard to their ancestral lands and natural resources.

The Committee urges the State party to carry out environmental and social impact assessments of economic activities, particularly mining and oil exploration, and to consult with the communities concerned, with a view to ensuring that these activities do not deprive indigenous peoples of the full enjoyment of their rights with regard to their ancestral lands and natural resources. In this respect, the Committee encourages the State party to consider ratifying the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169).

Article 3

331. The Committee is concerned that women continue to face discrimination in many domains, especially where access to employment, land and credit and inheritance rights are concerned, even though, under article 14, paragraph 2, of the Constitution, the State is required to ensure that all forms of discrimination against women are eliminated and that women's rights in all spheres of private and public life are protected. It is also concerned about the State party's contention that women themselves help to perpetuate the stereotypes that marginalize them.

The Committee requests the State party to take more stringent and effective legal and practical measures to counter inequality between the sexes and discrimination against women in the State party. It urges the State party swiftly to adopt the personal and family code that is currently being drafted, to indicate in its next report the key provisions of the code on equal rights for men and women and to state whether the code is consistent with the various obligations established under the Covenant. The Committee encourages the State party to take effective measures, including through the use of the media and education, to eliminate traditional stereotypes regarding the status of women in the public and private spheres and to ensure effective gender equality in all fields, as required by article 2, paragraph 2, and article 3 of the Covenant. In this regard, the Committee draws the attention of the State party to general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

332. The Committee is concerned about the low level of women's representation in Parliament, in senior Government positions and in the judiciary.

The Committee recommends that the State party adopt special measures of affirmative action for women, such as guaranteed seats in Parliament and a statutory minimum quota for the appointment, recruitment and promotion of women in Government jobs and in the judiciary, including in positions of responsibility and in the most senior posts. The Committee requests the State party to indicate in its next report if the bill on quotas, which is supposed to remedy the problem of the underrepresentation of women in paid employment, has been adopted, and, if not, what is preventing its adoption.

Articles 6, 7 and 8

333. The Committee is concerned about the high unemployment rate and the lack of detailed information on national and regional employment programmes for the formal and informal sectors or other clear strategies to solve this problem. It regrets that the Labour Code does not provide for a labour inspection system.

The Committee urges the State party to develop and implement action plans for employment that will progressively reduce unemployment in the informal sector. The Committee recommends that the State party amend its labour legislation in order to set up a system of labour inspectors, and that it seek technical assistance from ILO in order to train them.

334. The Committee notes with concern that the principle of equal remuneration for men and women workers for work of equal value is not applied uniformly by State-owned and private companies.

The Committee urges the State party to implement the measures recently adopted to ensure equal remuneration for work of equal value, in accordance with the Covenant, and to reduce the wage gap between men and women.

Article 9

335. The Committee is concerned that the State party's social security system does not provide universal coverage and that a large number of vulnerable and marginalized groups, such as casual workers and the self-employed, are excluded.

The Committee recommends that the State party ensure universal social security coverage in Chad, giving priority to vulnerable and marginalized groups. In this regard, the Committee encourages the State party to explore the possibilities afforded by international cooperation, in keeping with article 2 of the Covenant.

Article 10

336. The Committee is concerned about the prevalence of traditional practices that violate the physical integrity and human dignity of women and girls and notes with concern that Act No. 06/PR/2002 on the promotion of reproductive health, which prohibits female genital mutilation, early marriage, domestic violence and sexual violence, does not specify penalties for the perpetrators of such acts. The Committee notes with concern that 45 per cent of women and girls are victims of some form of genital mutilation, according to the report of the Secretary-General on children and armed conflict in Chad (S/2007/400).

The Committee recommends that the State party launch awareness-raising campaigns to combat harmful traditional practices and educate parents, particularly mothers, and children and community leaders on the harmful effects of genital mutilation, which constitutes cruel, inhuman or degrading treatment, and that it amend Act No. 06/PR/2002 as a matter of urgency to stipulate penalties consistent with the seriousness of the offences defined in the Act. The Committee calls on the State party to take the necessary measures to eliminate harmful traditional practices such as female genital mutilation and to provide detailed information on that subject in its next periodic report.

337. The Committee is seriously concerned about the extent of sexual violence, including rape, against women and girls, particularly in and around sites for internally displaced persons and refugee camps. It is particularly concerned about reports that women and girls in communities of refugees and internally displaced persons are not afforded appropriate protection from, or remedies in respect of, violence in all its forms. It is also concerned about the use of traditional conflict-resolution methods that perpetuate impunity and open the way for violence.

The Committee requests the State party to provide comprehensive information in its next report on the situation of refugee and internally displaced women and children in Chad, in particular on the means used to protect these women and children from all forms of violence and the mechanisms to offer them remedies and opportunities for social reintegration. It further urges the State party to take steps to investigate and punish all perpetrators of violence against refugees and internally displaced women and children. The Committee urges the State party to assign more staff to, and include more women in, the police forces responsible for security at camps for refugees and internally displaced persons. It also encourages the State party to continue working with the United Nations Mission in the Central African Republic and Chad (MINURCAT) and United Nations specialized agencies in the field.

338. The Committee is deeply concerned about the prevalence of child labour, particularly the economic exploitation and frequent ill-treatment of children who tend the herds of nomadic herders (*enfants bouviers*), of Koranic students who are sent out to beg (*muhajirin*) and of child domestic workers.

The Committee urges the State party to provide information in its next periodic report on the measures taken to combat child labour and to put an end to the practice of employing child livestock-herders, *muhajirin* and domestic workers, together with details on the outcome of such measures and the assistance provided to victims of these practices and their families.

339. The Committee notes with concern the presence of child soldiers, including girls, in military camps and armed groups and the method of recruitment whereby families are encouraged to send their children in exchange for payment.

The State party should put a stop to all recruitment of child soldiers, including girls, by armed groups. To this end, it should set up a monitoring system comprising regular follow-up visits to military camps and military training centres in order to prevent any further recruitment of minors. The State party should step up efforts to assist and reintegrate children who have been involved in the army.

Article 11

340. The Committee notes with concern that funding for social services and public infrastructure is far from adequate, despite the country's great natural wealth and the provision under article 212 of the Constitution which states that local government must be given a share of the proceeds from land and mineral resources.

The Committee recommends that the State party take all appropriate measures, including by using oil revenues, to speed up the renovation or rebuilding of public infrastructure and social services in both urban and rural areas and to ensure that the exploitation of natural resources benefits national development and promotes public welfare.

341. The Committee notes with concern that, notwithstanding the poverty reduction strategy, a high percentage of the State party's population lives in poverty or extreme poverty, particularly the inhabitants of rural and deprived urban areas; landless persons; women; children; households headed by women; families living with HIV/AIDS; persons with disabilities; and internally displaced persons. It notes in particular that the State party has yet to create an effective coordination mechanism to combat poverty.

The Committee urges the State party to take all effective measures to implement a poverty reduction strategy that integrates economic, social and cultural rights, in line with the Commitee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). It recommends that the State party adopt measures to assess the impact and identify the weaknesses of its strategy. It requests the State party to include in its next periodic report comparative data, disaggregated by sex, age and rural/urban populations, together with indicators on the number of persons living in extreme poverty and on the progress made in combating poverty.

342. The Committee is deeply concerned about the chronic food insecurity experienced by a large section of the population.

The Committee recommends that the State party set up, and provide sufficient funding for, programmes designed to ensure for everyone, especially the most disadvantaged and marginalized persons and social groups, physical and economic access to the minimum of essential food that is sufficient, nutritionally adequate and safe to ensure freedom from hunger, in line with the Committee's general comment No. 12 on the right to adequate food (1999) and its statement on the world food crisis (E/C.12/2008/1).

343. The Committee notes with concern the State party's statement that the entire population, except for a very few people living in city centres, lacks basic amenities such as drinking water, waste removal, sanitary facilities and electricity.

The Committee urges the State party to ensure access to drinking water and adequate sanitation facilities in all rural and urban communities, if necessary by seeking international cooperation and assistance.

344. The Committee is concerned about the high proportion of the population that is homeless and the lack of effective measures to provide social housing for low-income, vulnerable and marginalized individuals and groups living in informal

settlements, most of whom are deprived of affordable access to clean water and proper sanitation facilities.

The Committee recommends that the State party adopt a comprehensive set of housing plans and policies and allocate sufficient budgetary resources to guarantee their implementation, especially for low-income, vulnerable or marginalized individuals and groups. The Committee also recommends that the State party take immediate measures to ensure affordable access to clean water and proper sanitation, in line with the Committee's general comment No. 15 (2002) on the right to water. The Committee also requests the State party to include in its next periodic report data, broken down by sex, age and rural/urban population, on the phenomenon of homelessness.

345. The Committee is concerned about the large number of forced evictions and housing demolitions that have taken place in districts of N'Djamena without prior notice being provided or adequate alternative housing or compensation being offered.

The Committee recommends that the State party take appropriate measures to ensure that forced evictions are used only as a last resort and that it adopt effective legislative or other measures strictly defining the circumstances and safeguards subject to which evictions may be carried out, in line with the Committee's general comment No. 7 (1997) on the right to adequate housing (Covenant, art. 11, para. 1) and forced evictions. The Committee also recommends that the State party ensure that victims of forced eviction are provided with appropriate compensation or alternative housing, that evictions are not carried out without those affected being consulted and that victims have access to an effective remedy. It requests the State party to include in its next periodic report data on forced evictions, disaggregated by sex, age and rural/urban population.

Article 12

346. While taking note of the detailed and informative statistics provided in paragraphs 193 to 206 of the State party's report, on the subject of article 12 of the Covenant, the Committee is concerned about the high maternal, infant and under-five mortality rates, the high prevalence of HIV/AIDS, the shortage of health professionals in rural areas and the mediocre quality of health services. The Committee regrets that no information on the results of the national health policy launched in 1998 has been provided.

The Committee urges the State party to take steps to deal with the current situation in the health sector, where the basic health needs of the population are not being met, including by improving basic health services, increasing public spending on health and taking measures to prevent and treat the HIV/AIDS pandemic and other communicable diseases. The Committee also recommends that the State party take into account the Committee's general comment No. 14 on the right to the highest attainable standard of health. It requests the State party to provide detailed and up-to-date information in its next report, including indicators and disaggregated statistical data, that will allow the Committee to assess progress in this area.

347. The Committee notes with concern the alarming situation with regard to the population's right to sexual and reproductive health and the lack of basic sexual and reproductive health services in the State party.

The Committee recommends that the State party should adopt specific measures to develop basic sexual and reproductive health services and care and should carry out educational programmes on sexual and reproductive health.

348. The Committee notes with concern the serious health risks posed by the contamination of groundwater and rainwater arising from the fact that in 2000 more than 70 per cent of the population lacked proper toilets, while only 24 per cent had access to an adequate sewage system.

The Committee urges the State party to provide all rural and urban communities with appropriate systems for ensuring access to drinking water and to adequate sanitation infrastructure, if necessary by seeking international assistance and cooperation.

Article 13

349. While noting that article 35 of the Constitution guarantees that every citizen has the right to education, that public education is free of charge and that basic education is compulsory, the Committee regrets that the State party has not provided an adequate reply concerning the application of these provisions, particularly with regard to poor children from rural and urban areas and indigenous children, thus preventing the Committee from assessing the implementation of this constitutional guarantee. The Committee commends the 10-year programme adopted by the State party to support the reform of the education system over the period 2004-2015, but notes with concern the high school dropout rate in the poorest regions of the country, particularly rural areas.

The Committee requests the State party to indicate, in its next report, to what extent compulsory primary education is provided free of charge to all children in the State party, including poor children in urban and rural areas and indigenous children. In this regard, the Committee refers the State party to its obligations under article 14 of the Covenant, which require it to secure "compulsory primary education free of charge for all". The Committee recommends that the State party, in implementing its national plan on education, take into account the Committee's general comments Nos. 11 and 13 (1999) and establish an effective monitoring mechanism for the plan. The State party is also encouraged to seek technical advice and assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the implementation of its plan.

350. The Committee is concerned about the persistently high illiteracy rate in the State party, which is higher among women than men. It also notes with concern the preference traditionally given to male children where education is concerned.

The Committee urges the State party to take all effective measures to improve the literacy rate, particularly among women. It recommends that the State party step up its efforts to provide girls and boys with equal access to education. It urges the State party to implement a comprehensive national plan on education for all, as required under paragraph 16 of the Dakar Framework for Action, taking into account the Committee's general comments Nos. 11 and

13 (1999) and general comment No. 1 (2001) of the Committee on the Rights of the Child on the aims of education. The Committee also requests the State party to provide detailed information in its next periodic report on the measures taken to improve the quality of education and to promote equal opportunities for all in education, including in vocational training. The Committee encourages the State party to consider ratifying the 1960 UNESCO Convention against Discrimination in Education.

Article 15

351. The Committee regrets the lack of information on the measures taken by the State party to preserve, protect and promote the right to take part in cultural life.

The Committee requests the State party to include in its next report information on the measures that it has taken to preserve, protect and promote the right to take part in cultural life.

352. The Committee is concerned about the system of exploitation of natural resources in the State party, which adversely affects the land and the way of life of indigenous peoples, depriving them of rights related to their ancestral land and cultural identity.

The Committee recommends that the State party adopt specific measures to protect the cultural identity and ancestral land of the indigenous population.

353. The Committee recommends that the State party provide economic, social and cultural rights education to students at all levels, and extensive human rights training for members of all professions and sectors with a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, immigration officers, the police and the military.

The Committee requests the State party to provide in its next periodic report an exact list of all the international conventions on environmental protection to which it is a party. It also requests the State party to provide details of the respective mandates of the Ministry of the Environment and the National High Committee on the Environment. The Committee wishes to know if the State party, as a party to the United Nations Convention to Combat Desertification, benefits from the subregional and Global Environment Facility programmes of action for the implementation of the Convention.

354. The Committee strongly recommends that the State party draw on the technical assistance offered by the Office of the United Nations High Commissioner for Human Rights and the relevant United Nations specialized agencies and programmes in its efforts to realize economic, social and cultural rights in accordance with its international legal obligations under the Covenant and when preparing and submitting its next report and following up on the present concluding observations.

355. The Committee recommends that the State party consider ratifying the following ILO conventions: the Unemployment Convention, 1919 (No. 2); the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Employment Policy Convention, 1964 (No. 122); the Labour Statistics Convention, 1985 (No. 160); the

Indigenous and Tribal Peoples Convention, 1989 (No. 169); and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174).

356. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

357. The Committee invites the State party to update its core document in accordance with the instructions on the common core document set out in the harmonized guidelines on reporting which were recently approved by the international human rights treaty bodies.

358. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

359. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among State officials, members of the judiciary and civil society organizations, and to inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to include non-governmental organizations and other members of civil society in the national discussions that are held prior to the submission of its next periodic report.

360. The Committee requests the State party to submit its fourth and fifth periodic reports by 30 June 2012.

Madagascar

361. The Committee considered the second report of Madagascar on the implementation of the Covenant (E/C.12/MDG/2) at its 39th, 40th and 41st meetings, held on 9 and 10 November 2009 (E/C.12/2009/SR.39, 40 and 41), and adopted at its 54th and 55th meetings, held on 18 and 19 November 2009, the following concluding observations.

A. Introduction

362. The Committee welcomes the submission of the second report of the State party but regrets the 17 years' delay in its submission. The Committee also welcomes the written replies to the list of issues (E./C.12/MDG/Q/2/Add.1), as well as the frank and constructive dialogue with the delegation which included a number of representatives from different ministries.

B. Positive aspects

363. The Committee welcomes the ratification by the State party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 13 December 2005, the two Optional Protocols to the Convention on the Rights of the Child, on 22 September 2004, as well as the signing, in 2007, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. It also welcomes the ratification of International Labour Organization (ILO) Conventions No. 98 (1949) concerning the Application of the Principles of the Right

to Organise and to Bargain Collectively, No. 105 (1957) concerning the Abolition of Forced Labour, No. 138 (1973) concerning the Minimum Age for Admission to Employment and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. It further welcomes the ratification by the State party, in 2008, of the Convention on the Nationality of Married Women.

364. The Committee welcomes the adoption of a new Constitution on 18 September 1992, which incorporates a wide range of human rights, including a number of economic, social and cultural rights. It also welcomes information that international treaties duly ratified, including the Covenant, are considered to be an integral part of national law and can be invoked before the domestic courts. The Committee further welcomes the important legislation enacted by the State party, namely:

- Act No. 2007-022 of 20 April concerning marriage and systems of matrimonial property, which sets the marriage age at 18 for both girls and boys
- Act No. 2007-023 of 20 August 2007 on the rights and protection of the child which covers child victims of all forms of abuse
- Act No. 97-044 of 2 February 1998 on the rights of persons with disabilities
- Act. No. 2005-1040 of 14 October 2006 on the protection of persons affected by HIV/AIDS
- Acts Nos. 94-033 of 13 March 1995 and 2004-004 of 26 July 2004 on free and compulsory primary education

365. The Committee notes with appreciation the recent adoption of the Madagascar Action Plan 2007-2012 to combat poverty and foster development.

C. Factors and difficulties impeding the implementation of the Covenant

366. The Committee acknowledges that the State party has faced a serious political crisis, which has reduced its ability to fulfil its obligations under the Covenant.

D. Principal subjects of concern and recommendations

367. The Committee regrets that the report of the State party does not contain sufficiently updated information and statistics that would enable it to fully assess how the rights set out in the Covenant are respected in the State party.

The Committee recommends that the State party provide updated information in its next periodic report on the practical application of the Covenant, including through disaggregated data and relevant statistics, regarding the implementation of its laws and the practical results of plans, programmes and strategies carried out in the various fields covered by the Covenant.

368. The Committee is concerned about the lack of implementation of Covenant provisions by domestic courts, despite the fact that international treaties are part of domestic legislation and that several rights enshrined in the Covenant were incorporated into the 1992 Constitution.

The Committee urges the State party to take immediate steps to ensure that Covenant provisions can be invoked by all before the domestic courts and to

include in its next periodic report precise updated information on judicial decisions which give effect to rights under the Covenant.

369. The Committee is concerned that human rights education in schools and training for civil servants and members of the judiciary do not integrate economic, social and cultural rights.

Recalling the principles of interdependence and indivisibility of human rights, the Committee recommends that the State party provide education on human rights to students at all levels of education, and human rights training for members of all professions and sectors that have a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, the police and the military.

370. The Committee is concerned that the State party maintains its reservation to article 13, paragraph 2, of the Covenant, more particularly as it relates to primary education.

The Committee calls upon the State party to consider withdrawing its reservation to article 13, paragraph 2, of the Covenant not to further "postpone its application of article 13, paragraph 2, of the Covenant, more particularly insofar as it relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage".

371. The Committee remains concerned that corruption and the impunity associated with it persist in the State party, impeding the enjoyment by all of economic, social and cultural rights, despite efforts made by the State party to combat corruption.

The Committee recommends that the State party take concrete measures to effectively combat corruption, in particular to prosecute cases of corruption and punish those who are responsible; to conduct awareness-raising campaigns on the negative effects of corruption; to ensure the transparency of conduct of public authorities, in law and in practice; to enact anti-corruption legislation and train police and law enforcement officers, prosecutors and judges on the strict application of the legislation. The Committee also recommends that the State party provide in its next periodic report detailed information about progress made, and obstacles encountered, in combating corruption.

372. The Committee is concerned that Law No. 2007-036 of 14 January 2008, relating to investment law which allows land acquisition by foreign investors, including for agricultural purposes, has an adverse impact on the access of peasants and people living in rural areas to cultivable lands, as well as to their natural resources. The Committee is also concerned that such land acquisition leads to a negative impact on the realization by the Malagasy population of the right to food (art. 1).

The Committee recommends that the State party revise Law No. 2007-037 and facilitate the acquisition of land by peasants and persons living in rural areas, as well as their access to natural resources. It also recommends that the State party carry out a national debate on investment in agriculture and seek, prior

to any contracts with foreign companies, the free and informed consent of the persons concerned.

373. The Committee is concerned that discrimination against the descendants of slaves persists, despite the legislation protecting against discrimination (art. 2).

The Committee urges the State party to take appropriate measures to eliminate discrimination against the descendants of slaves, including by applying the existing legislation against discrimination, to take awareness-raising measures to combat persistent negative attitudes and stereotypes and to include in the next periodic report information on the situation of the descendants of slaves.

374. The Committee is concerned that under the current Nationality Code, children born to a mother of Malagasy nationality and a father of foreign nationality cannot acquire Malagasy nationality (arts. 3 and 10).

The Committee urges the State party to adopt revised legislation, so as to guarantee Malagasy nationality to children born to a mother of Malagasy nationality and a father of foreign nationality, on an equal footing to children born to a Malagasy father and a mother of foreign origin.

375. The Committee is concerned about the absence of framework legislation on equality between women and men (art. 3).

In the light of general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), the Committee recommends that the State party adopt specific legislation on equality between women and men on which strategies and plans could be built.

376. The Committee is concerned that, in practice, women's unequal status in marriage and family matters owing to customary and traditional attitudes remains, despite the adoption of Act No. 2007-022 of April 2007 concerning marriage and systems of matrimonial property, which sets the age of marriage at 18 for girls and boys, and guarantees the same rights and obligations to spouses in the household.

The Committee encourages the State party to implement effective measures, in particular by pursuing the dialogue with traditional chiefs, on strengthening understanding of the equality between women and men, and to enhance a positive and non-stereotypical portrayal of women.

377. The Committee is concerned that, under article 83 of Law No. 68-012 of 4 July 1968 on succession, women are still discriminated against regarding inheritance of immovable property within their families.

The Committee recommends that the State party urgently take comprehensive measures to eliminate practices and stereotypes which discriminate against women and ensure the effective implementation of existing legislation concerning marriage and systems of matrimonial property, as well as the exercise of equal rights among spouses in households. It also recommends that the State party implement legislation which allows women to inherit immovable property on an equal footing with men.

378. The Committee is concerned about the high rate of underemployment in the State party, in particular among the vulnerable population and that it has greatly increased among women. It is further concerned about the precarious working conditions and low wages in the formal and informal sectors (arts. 6 and 7).

The Committee recommends that the State party develop effective employment strategies focusing on young people and women, as well as legislation and policies aimed at improving the working conditions and wages in the formal and informal sectors.

379. The Committee is concerned that Law No. 2007-037 of 14 January 2008, relating to free zones and enterprises prevents persons working in such zones from enjoying the same rights and protection accorded to other workers by the Labour Code (art. 7).

The Committee calls on the State party to amend the law relating to free zones and enterprises, in order to apply the Labour Code to persons working in these areas.

380. The Committee is concerned that rural women, informal sector workers and some domestic workers are not covered by any form of social security (art. 9).

The Committee recommends that the State party consider how to extend the coverage of social security to rural women and informal sector workers and implement social security legislation for all domestic workers. The Committee also requests the State party to provide comprehensive and precise information on the measures taken, as well as statistics, in its next periodic report.

381. While noting that child labour is prohibited by law, the Committee is concerned that it remains widespread in the State party and that children are employed in agricultural and mining industries, as well as for domestic service in rural and urban areas. The Committee is also concerned that despite various programmes and plans adopted, the practical results remain inadequate (art. 10).

The Committee recommends that the State party:

(a) Reinforce the legal framework to combat child labour and adopt all the necessary legal and judicial measures to eradicate this phenomenon;

(b) Support and reinforce the role of the family as an essential element for the protection of children and combat against child labour;

(c) Take all necessary measures to implement effectively all policies against child labour, including through awareness-raising campaigns for the public on protection of children, strengthen preventive measures, and prosecute and punish those who are responsible.

382. The Committee notes with concern that, despite being prohibited by law, sexual harassment in the workplace is widespread, in particular in the export processing zones. The Committee is also concerned that many sexual harassment cases remain unreported (arts. 7 and 10).

The Committee urges the State party: (a) to implement the law prohibiting sexual harassment and to conduct awareness-raising campaigns against sexual harassment in the workplace, including in the export processing zones, and (b) to ensure that victims can lodge complaints without fear of retaliation and that those who are responsible are prosecuted and punished. The Committee also requests that the State party provide information in its next periodic report on the number of complaints and measures taken against those responsible.

383. The Committee is concerned about the prevalence of violence against women, including marital rape, which is not recognized as a criminal offence, and violence against children. It is also concerned that such violence is socially tolerated and goes unreported because of a practice of silence, resulting in victims not lodging complaints against perpetrators. The Committee is further concerned about the lack of information and disaggregated data on domestic violence (art. 10).

The Committee recommends that the State party combat violence against women and children, by implementing the existing legislation and adopting comprehensive measures to address all forms of domestic violence. The Committee also recommends that the State party ensure victims' access to justice, by encouraging the reporting of crimes and that perpetrators are prosecuted and punished. The Committee calls upon the State party to ensure that marital rape constitute a criminal offence. It requests the State party to raise public awareness through the media and education programmes on violence against women and children. The Committee also requests that the State party provide information on the impact of such measures, as well as data on the prevalence of various forms of such violence, disaggregated by age groups.

384. The Committee is concerned about the persistence of trafficking in women and children, including sex tourism, in the country, in particular for girls living in poverty in rural and remote areas, despite the adoption of Act. No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Criminal Code concerning measures to prevent trafficking in persons and sex tourism, and the Act ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), as well as awareness-raising campaigns on sex tourism. The Committee regrets the absence of data relating both to trafficking and prostitution (art. 10).

The Committee urges the State party to effectively implement the legislation against trafficking, to intensify its efforts to combat trafficking in persons, especially in women and children, in particular for the purposes of sexual exploitation. It also recommends that the State party strengthen its programmes and information campaigns to prevent trafficking, to provide mandatory training for law officials and judges, and to prosecute and punish those responsible. It further recommends that the State party address the root cause of trafficking and exploitation by increasing its efforts to improve education for children and create employment-generating activities, in particular for women in rural and remote areas.

385. The Committee notes with grave concern that, although the State party has adopted a Poverty Reduction Strategy, almost 69 per cent of the population continues to live in poverty, especially women, young people and persons living in rural and remote areas. The Committee is also concerned that about 50 per cent of the population of the State party has no access to clean drinking water and adequate sanitation facilities, especially in rural areas (art. 11).

The Committee recommends that the State party allocate sufficient funds for the implementation of its poverty strategy and ensure the full integration of economic, social and cultural rights, as recommended by the Committee in its Statement on Poverty and the International Covenant on Economic, Social and

Cultural Rights (E/C.12/2001/10). The Committee also urges the State party to take immediate and effective measures to ensure that the population has affordable access to clean drinking water, in line with its general comment No. 15 (2002) on the right to water (articles 11 and 12 of the Covenant).

386. The Committee is concerned that the State party has no strategy or programme in place to address the problem of homelessness, to examine its extent and to ensure an adequate standard of living for the homeless (art. 11).

The Committee urges the State party to adopt a strategy or programme to address the problem of homelessness, after examining its extent and causes, so as to ensure an adequate standard of living for the homeless. The Committee also invites the State party to include in its next periodic report disaggregated data by sex, age and rural/urban population on the extent of homelessness in the State party.

387. The Committee is concerned about the precarious situation of many families who were forcibly evicted from their homes without being provided with adequate compensation or offered alternative accommodation (art. 11).

The Committee urges the State party to take all appropriate measures to ensure that forced evictions take place as a last resort and that persons forcibly evicted from their homes are provided with adequate compensation or offered alternative accommodation, in line with the guidelines adopted by the Committee in its general comment No. 7 (1997) on the right to adequate housing (article 11 (1) of the Covenant): Forced evictions. The Committee also invites the State party to include in its next periodic report disaggregated data by sex, age and rural or urban population on the number of forced evictions taking place in the State party.

388. The Committee is concerned about substandard conditions of detention in prisons, in particular that prisoners suffer from malnutrition and lack of health care. The Committee remains concerned about the degree of overcrowding of prisons and detention facilities in the State party, while noting explanations given by the State party (art. 11).

The Committee urges the State party to adopt emergency measures to combat the persistent problem of malnutrition in prisons, including by increasing the resources allocated to food for the prisoners and providing them with access to health care. It also recommends that the State party provide information on the results achieved by the programmes carried out to improve the food in prisons. The Committee also urges the State party to take appropriate measures to reduce and prevent overcrowding in prisons, including by using alternative measures of punishment.

389. The Committee is concerned that life expectancy remains very low in the State party: 58.1 years for women and 56.3 for men. It is also concerned that the maternal mortality rate and infant under-five mortality (93 per cent) remain very high due, inter alia, to lack of access to adequate maternity health-care centres, in particular for pregnant women living in rural and remote areas, and for children who suffer from chronic malnutrition due to the absence of adequate health care and living conditions. The Committee also regrets the lack of precise information on the outcomes of plans carried out by the State party and on the insufficient budget allocations for health care (art. 12).

The Committee recommends that the State party:

(a) Strengthen its National Health Plan with clear objectives aimed at increasing the life expectancy rate and reducing adverse living conditions;

(b) Take necessary measures and continue efforts to improve access by women to basic obstetric and neonatal care and to basic health-care centres, in particular in rural and remote areas;

(c) Reinforce its National Children's Health Programme to reduce child mortality, including by addressing the adverse living conditions of children and improving access to vaccination for children under 5;

(d) Increase the resources allocated to health care;

(e) Provide information about, and precise data on, progress made in improving the health situation in the State party.

390. The Committee is concerned about the insufficient access of the population, especially of women and children, to basic family planning and sexual and reproductive health services, especially in remote and rural areas. The Committee is also concerned about the lack of access to sexual and reproductive health education in the school system. The Committee is further concerned that the draft law to modify the 1920 Law on the right to reproductive health has not been adopted.

The Committee recommends that the State party provide: (a) basic services for family planning and sexual and reproductive health to the population, especially for women and children and (b) education on sexual and reproductive health in its school system and approve the draft law modifying the above-mentioned 1920 Law.

391. The Committee is concerned that access to schools remains a problem for children living in rural and remote areas. It is also concerned about the high rate of repetition and dropouts, in particular for girls attending secondary schools. The Committee is further concerned that the status of teachers is less favourable than the status of other public servants in terms of salaries and benefits, and that the budget allocated to education remains insufficient. Furthermore, the Committee is concerned about the situation of children with disabilities in the school system (art. 13).

The Committee urges the State party to strengthen its various measures and programmes in order to:

(a) Address the problem of access to schools for children living in rural and remote areas;

(b) Take appropriate measures to ensure regular school attendance and reduce the dropout rate of children in particular in secondary schools;

(c) Strengthen the capacity of teachers through training and review their status;

(d) Develop programmes aimed at integrating children with disabilities into formal schooling.

The Committee also recommends that the State party increase its budget for education and seek international assistance to deal with the above-mentioned issues, in particular those related to children with disabilities.

392. The Committee is concerned that school attendance is hampered by the stereotyped attitudes of parents on the lack of relevance of education to everyday life and livelihoods and job opportunities (art. 13).

The Committee recommends that the State party conduct awareness-raising campaigns for parents on the relevance of education of their children. The Committee also recommends that the State party update its school curricula, so as to include knowledge and skills that will enable students to improve their prospects for earning their livelihood and for job opportunities.

The Committee recommends that the State party ensure the guarantee of freedom of religion, as enshrined in the Constitution of the State party.

393. The Committee is concerned about the systematic exploitation of land and natural resources which affects the standard of living of the Malagasy population and its different ethnic groups, thus preventing them from maintaining their cultural and social links with their natural environment and their ancestral lands (art. 15).

The Committee recommends that the State party adopt specific measures and appropriate legislation to protect the ancestral lands and cultural identity of different ethnic groups of the State party.

394. The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting.

395. The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

396. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

397. The Committee encourages the State party to consider inviting the Special Rapporteur on the right to food to conduct a mission to the State party and to consider extending invitations to other special rapporteurs dealing with economic, cultural and social rights.

398. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, and to inform the Committee on the steps taken to implement them in its next periodic report.

399. It invites the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

400. The Committee requests the State party to submit its next periodic report, prepared in accordance with the revised reporting guidelines of the Committee adopted in 2008 (E/C.12/2008/2), by 30 June 2014.

Poland

401. The Committee on Economic, Social and Cultural Rights considered the fifth periodic report of Poland on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/POL/5) at its 37th and 38th meetings, held on 6 November 2009 (E/C.12/2009/SR.37 and 38), and adopted at its 56th and 57th meetings, held respectively on 19 and 20 November 2009, the concluding observations as set out below.

A. Introduction

402. The Committee welcomes the submission of the fifth periodic report of Poland and the written replies to its list of issues (E/C.12/POL/Q/5/Add.1), both of which contained comprehensive and detailed information on the situation in the State party.

403. The Committee welcomes the opportunity to engage in an open and constructive dialogue with the State party, and notes with appreciation the attendance by a large and multisectoral delegation, as well as the responses it provided to the Committee's oral questions.

B. Positive aspects

404. The Committee welcomes the progress achieved by the State party in advancing the enjoyment of economic, social and cultural rights in the State party since the consideration of its previous periodic report by the Committee, including the considerable improvement in the standard of living.

405. The Committee welcomes the adoption of measures, legislative and otherwise, by the State party that have contributed to the realization of the economic, social and cultural rights enshrined in the Covenant, including the following:

(a) The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocols), in September 2003; the implementation of the National Programme for Fighting and Preventing Trafficking in Human Beings since 2003; and the establishment of a network of bodies at different levels, vested with various responsibilities to combat trafficking;

(b) In November 2003, the adoption of the Act on Family Allowances, which expanded the benefits available to families with dependent children; the improvement of the length of maternity leave since December 2006; and the launch of the "family package";

(c) The implementation of various programmes to combat racial discrimination, xenophobia and related intolerance, and the implementation of the Programme for the Roma Community in Poland (2004-2013);

(d) The adoption of the Act on Promotion of Employment and Labour Market Institutions, in April 2004, and the various measures and programmes addressing unemployment;

(e) The substantial increase in the minimum wage;

(f) The adoption of various regulations for the protection of the environment and for the improvement of industrial hygiene in the country.

406. The Committee welcomes the submission, on 1 January 2009, by the State party of the updated common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies.

C. Factors and difficulties impeding the implementation of the Covenant

407. The Committee notes the absence of significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

408. The Committee is deeply concerned that the State party still views the Covenant as programmatic, aspirational and not justiciable. The Committee remains concerned that the State party has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order, especially in the light of the decision of the Supreme Court in 2000 to the effect that the Covenant provisions could not be invoked by individuals before national courts.

The Committee reiterates its position that all the Covenant rights are fully justiciable and urges the State party to take the necessary measures, in line with its general comment No. 9 on the domestic application of the Covenant, to ensure that the provisions of the Covenant are made justiciable and that effective remedies are available to victims of violations of economic, social and cultural rights.

409. The Committee is concerned that the training programmes for the judges, prosecutors and members of the Bar Council, teachers, social workers, as well as public officials concerned with the implementation of the rights contained in the Covenant, do not cover the provisions of the Covenant and their application in a systematic manner.

The Committee calls on the State party to provide systematic training on the provisions of the Covenant and their application to members of all professions and sectors that play a direct role in the promotion and protection of the rights contained in the Covenant, including judges, lawyers, civil servants, teachers, law enforcement officers, health-care professionals, migration officers, the police and the military.

410. The Committee is concerned about the insufficient awareness of the provisions of the Covenant in the general public at large. The Committee is also concerned that national school curricula do not provide for adequate human rights education.

The Committee calls on the State party:

(a) To take effective measures to increase awareness in the public at large of the economic, social and cultural rights contained in the Covenant, as well as of judicial or other remedies available to individuals in the event of violations of these rights, and encourages the State party to involve civil society and national human rights institutions in this regard;

(b) To ensure that human rights education is provided in schools at all levels, and that it covers the economic, social and cultural rights contained in the Covenant.

411. The Committee is concerned that the office of the Commissioner for the Protection of the Civil Rights has not placed adequate emphasis on the monitoring of the enjoyment of economic, social and cultural rights.

The Committee urges the State party to ensure that the office of the Commissioner for the Protection of the Civil Rights functions in conformity with the Paris Principles and the Committee's general comment No. 10, and monitors the realization of all economic, social and cultural rights.

412. The Committee continues to be concerned at the de facto discrimination experienced by some disadvantaged and marginalized individuals and groups, such as ethnic minorities, persons with disabilities, and lesbian, gay, bisexual and transgender persons in the enjoyment of their economic, social and cultural rights, despite the appointment of the Plenipotentiary for Equal Treatment in April 2008. The Committee is further concerned that the draft act on implementation of some European Union directives in the field of equal treatment does not provide comprehensive protection against all forms of discrimination in all areas related to Covenant rights (art. 2.2).

The Committee strongly urges the State party to amend the provisions of the draft act on implementation of some European Union directives in the field of equal treatment, to bring it into conformity with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights. The Committee also recommends that the State party ensure effective enforcement of existing anti-discrimination legislation, and strengthen measures to combat de facto discrimination, including through campaigns aimed at combating stereotypes, especially concerning disadvantaged and marginalized individuals and groups. The Committee invites the State party to include in its next periodic report information on the results of the work undertaken by the Plenipotentiary for Equal Treatment.

413. The Committee is concerned that the distinction between "national minorities" and "ethnic minorities" as provided for in the Act on National and Ethnic Minorities and Regional Language, adopted by the State party in 2005, is discriminatory towards some minorities, and that some minorities present in the territory of the State party are excluded from the definition of these two groups and therefore do not benefit from the implementation of the Act. The Committee also regrets that it has not received information on the implementation of the provision of the Act allowing persons belonging to linguistic minorities to use their own languages as "auxiliary languages" in dealing with public authorities (art. 2.2, 15).

The Committee calls on the State party to review the criteria used to identify minorities so that all sizeable communities in the territory of the State party are officially recognized under the Act. The Committee requests the State party to include in its next periodic report information on measures taken to implement the recommendation of the Committee in this regard, as well as detailed information on the implementation of the Act itself.

414. The Committee remains concerned that the Roma communities in the State party continue to face widespread discrimination in areas such as employment,

education, land tenure, access to welfare benefits, housing and health care, which impair the enjoyment of their economic, social and cultural rights (art. 2.2).

The Committee reiterates its recommendation that the State party combat discrimination against Roma communities in areas such as employment, education, land tenure, access to social welfare benefits, housing and health care. The Committee also urges the State party to take all effective measures for the advancement of Roma communities, including by allocating sufficient funds for the realization of programmes in their favour. The Committee calls on the State party to ensure that the implementation of the various national social inclusion programmes take into account the specific situation of Roma communities in the State party.

415. The Committee expresses its concern at the absence of a framework legislation embodying the principle of equal rights of men and women (art. 3).

The Committee urges the State party to promote and incorporate the principle of equal rights of men and women in its legislation and to take effective measures, including temporary special measures where necessary, to ensure equality between men and women as provided for in article 2, paragraph 2, and article 3 of the Covenant, in line with Committee's general comment No. 16. The Committee requests the State party to provide information and disaggregated statistical data in this regard in its next periodic report.

416. The Committee notes that unemployment is high in the State party. The Committee is particularly concerned at the higher unemployment among certain disadvantaged and marginalized groups, including persons with disabilities, long-term unemployed persons, persons of Roma origin, young persons as well as older ones (art. 6).

The Committee encourages the State party to continue its efforts to reduce unemployment and to intensify measures targeted at reducing unemployment among disadvantaged and marginalized groups, including persons with disabilities, long-term unemployed persons, persons of Roma origin, young persons as well as older ones. It calls upon the State party to take effective measures ensuring that persons with disabilities have equal opportunities for productive and gainful employment, in line with the Committee's general comment No. 5 (1994) on persons with disabilities.

417. The Committee is concerned that there continues to be inequality in the wages earned by men and women. The Committee is particularly concerned that the wage gap is significant in the public sector and among professionals with higher education (art. 7, 3).

The Committee reiterates the recommendation made at the consideration of the fourth report of the State party, calling on it to take measures to enforce existing legal provisions and administrative regulations guaranteeing equal remuneration for women and men. The Committee calls on the State party to incorporate in its legislation a specific provision on equal pay for equal work of equal value. Furthermore, it urges the State party to review its remuneration policies and practice in order to address the wage gap between women and men working in public administration.

418. The Committee is concerned about reports of long working hours and unpaid overtime work in the private sector. The Committee is also concerned that proper investigations of such cases have not been carried out (art. 7).

The Committee recommends that the State party take adequate measures to ensure the effective application of labour legislation protecting the rights of employees to just and favourable conditions of work, particularly for those working in the private seçtor. The Committee calls on the State party to fully investigate allegations of violations of the labour law and to take action against those found to be in breach of the law. The Committee invites the State party to include in its next periodic report statistics on violations of rights in articles 7 and 8, as collected through labour inspections, as well as statistical data on registered complaints, related investigations, findings and sanctions imposed.

419. The Committee notes with concern that a number of collective agreements have been suspended and that the renegotiation of those agreements has been subsequently disadvantageous to employees (art. 7, 6).

The Committee urges the State party to combat the practice of suspending collective agreements.

420. The Committee is concerned that some companies have wrongfully dismissed or harassed trade union leaders and members (art. 8).

The Committee recommends that the State party take effective measures to ensure that trade union leaders and employees participating or persons seeking to join trade unions are protected from any retaliatory actions and that they are able to exercise freely their rights under article 8 of the Covenant.

421. The Committee is concerned that the reform of the pension scheme undertaken by the State party has not addressed the recommendation of the Committee to correct the difference in retirement age between women and men, which is not only discriminatory but also denies women senior positions and reduces the amount of their pension (art. 9, 3).

The Committee urges the State party to take the necessary measures to adopt the same age of retirement for men and women.

422. The Committee is concerned that the legislation of the State party does not provide for the criminalization of domestic violence and marital rape and does not prohibit corporal punishment in the home (art. 10).

The Committee calls on the State party to ensure that the amendments to the 2005 Act on Counteracting Domestic Violence criminalize domestic violence, including marital rape, and prohibit corporal punishment in the home.

423. The Committee is concerned that the State party is a country of origin and destination and a point of transit for trafficking in humans, especially children and women, and for the purpose of sexual exploitation (art. 10).

The Committee urges the State party to implement the national programme for combating the trafficking of human beings and adopt effective strategies to combat the phenomenon. The Committee calls on the State party to provide statistical data on the extent of the problem of trafficking in its next periodic report.

424. The Committee is concerned at the increasing incidence of mental health illness, particularly among women, which is compounded by the limited availability and accessibility of mental health services, primarily provided through institutional facilities, especially by those living in rural areas (art. 12, 3).

The Committee urges the State party to take effective measures to address the causes of mental health problems, especially with regard to women. It also calls on the State party to take the measures necessary to expand the coverage of its ambulatory mental health services so as to fulfil the right to health of mental patients. The Committee calls on the State party to provide disaggregated statistical data on mental health in its next periodic report.

425. The Committee is concerned at the increasing consumption of alcohol and use of tobacco in the State party, particularly among women and children (art. 12).

The Committee calls on the State party to adopt the bill amending the law on tobacco, to combat tobacco use, especially among children, and to take effective measures, including public awareness campaigns, to reduce both tobacco use and alcohol consumption.

426. The Committee is concerned at reports that only a small number of drug users have access to substitute drug dependence treatment, and that such treatment is even more limited for those in detention (art. 12).

The Committee calls on the State party to take measures to ensure that effective treatment of drug dependence is made accessible to all, including to those in detention.

427. The Committee takes note with great concern that the State party does not guarantee basic services in the area of sexual and reproductive health and that it does not ensure the provision of contraception and family planning services in the public health system. The Committee also regrets the decision of the State party not to include family planning services in the State budget. The Committee notes with concern that the State party has not taken sufficient measures to implement its previous recommendation with regard to these issues (art. 12, 10).

The Committee recommends that the State party provide adequate access to basic services in the area of sexual and reproductive health. The Committee reiterates its recommendation, calling on the State party to provide family planning services through the public health-care system, including by making contraceptives available at affordable prices.

428. The Committee is concerned at the alarming number of clandestine abortions performed in the State party. The Committee is particularly concerned that women resort to clandestine, and often unsafe, abortion because of the refusal of physicians and clinics to perform legal operations on the basis of conscientious objection (art. 12, 10).

The Committee calls on the State party to take all effective measures to ensure that women enjoy their right to sexual and reproductive health, including by enforcing the legislation on abortion and implementing a mechanism of timely and systematic referral in the event of conscientious objection. The Committee also requests the State party to inform the medical profession of the provisions of Polish legislation on legal abortion. The Committee requests the State party to provide in its next periodic report detailed information, including

comparative data, about abortion, as well as legislative and other measures taken by the State party to implement the recommendation of the Committee in this regard.

429. The Committee notes with concern the continuous decrease in public spending on health and the negative consequences thereof on the enjoyment of the right to health. The Committee is also concerned that the gradual privatization of health-care risks making it less accessible and affordable (art. 12).

The Committee recommends that the State party increase its budget allocation for health in order to meet the growing number of emerging health-care issues in the country and ensure that privatization of the health system does not impede the enjoyment of the right to health, in particular for the disadvantaged and marginalized individuals and groups.

430. While noting the programme on antiretroviral therapy for persons living with HIV in Poland (2005-2006), the Committee expresses its concern at reports of limited access to treatment by HIV patients, particularly among drug users, and at the absence of information on provision of treatment following the closing of the above-mentioned programme (art. 12).

The Committee recommends that the State party take measures to ensure that treatment and care be available to and accessible by persons living with HIV/AIDS, and that it provide alternative treatment possibilities after the ending of the programme on antiretroviral therapy for persons with HIV in Poland (2005-2006).

431. The Committee is deeply concerned about the lack of sexual and reproductive health education programmes in national school curricula, which should provide objective information in accordance with medical and education standards (art. 13).

The Committee requests the State party to implement adequate programmes in sexual and reproductive education in national school curricula.

432. The Committee is deeply concerned at reports about homophobia, particularly bullying in schools (art. 13).

The Committee recommends that the State party take measures, in particular awareness-raising, to counter homophobic attitudes in educational settings, ensuring that individuals are not discriminated against on the basis of their sexual orientation and identity. The Committee also recommends that the State party introduce in schools the Compass manual on human rights education with young people, published by the Council of Europe.

433. The Committee is concerned that higher education in State-run universities is not completely free, although it is guaranteed by the Constitution of the State party. Such a situation has a disproportionately negative effect on disadvantaged and marginalized groups, especially in rural areas. The Committee regrets that it has not received sufficient information on the enrolment of Roma students in higher education (art. 13.2).

The Committee recommends that the State party implement the constitutional provision of free higher education and ensure, by every appropriate means, that it be accessible to all, especially to disadvantaged and marginalized groups, on the basis of ability, as stipulated by article 13 of the Covenant. The Committee

recommends that the State party take proactive measures to improve access to higher education by Roma students.

434. The Committee requests the State party to include in its next periodic report additional information on:

(a) The results of measures taken to protect the environment and improve industrial hygiene;

(b) The right to water and sanitation, including the results of regulatory measures on water sewage;

(c) Sexual harassment in the workplace;

(d) The nature and extent of hate crime in its territory, and the outcome of the National Programme to Combat Racial Discrimination, Xenophobia and Related Intolerance;

(e) Information on disciplinary dismissals, and case law related thereto.

435. The Committee invites the State party to provide in its next periodic report detailed information, including statistical data disaggregated by sex and by rural and urban distribution, on the extent of the informal economy, as well as the State party's policies and protection measures, if any, taken to deal with it.

436. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

437. The Committee encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities, and signing and ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

438. The Committee also encourages the State party to consider ratifying International Labour Organization Conventions concerning Basic Aims and Standards of Social Policy (Convention No. 117), Equality of Treatment of Nationals and Non-Nationals in Social Security (Convention No. 118) and the Prevention of Major Industrial Accidents (Convention No. 174).

439. The Committee requests the State party to make the present concluding observations widely available and accessible, and to disseminate them among all levels of society, in particular among State officials, the judiciary and civil society organizations, and to inform the Committee on all steps taken to implement them in its next periodic report.

440. The Committee encourages the State party to continue to engage national human rights institutions, non-governmental organizations and other members of civil society in the implementation of the present concluding observations and in the process of discussion at the national level prior to the submission of its next periodic report.

441. The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee (E/C.12/2008/2), by 30 June 2014.

Republic of Korea

442. The Committee on Economic, Social and Cultural Rights considered the third periodic report of the Republic of Korea on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KOR/3) at its 42nd, 43rd and 44th meetings, held on 10 and 11 November 2009 (E/C.12/2009/SR.42, 43 and 44), and adopted, at its 55th meeting, held on 19 November 2009, the concluding observations as set out below.

A. Introduction

443. The Committee welcomes the submission of the third periodic report of the Republic of Korea and the written replies to its list of issues, including statistical data (E/C.12/KOR/Q/3/Add.1). The Committee appreciates the frank and constructive dialogue with the delegation of the State party, which included representatives from various ministries with expertise on the subjects covered by the Covenant.

444. The Committee notes with appreciation the contribution of the National Human Rights Commission of Korea to the reporting process.

B. Positive aspects

445. The Committee notes with appreciation the positive efforts made by the State party in promoting the implementation of social, economic and cultural rights. The Committee welcomes in particular:

(a) The establishment of the national action plan for the protection and promotion of human rights 2007-2011 and of the National Human Rights Policy Council as a consultative body in charge of its implementation;

(b) The coming into effect of the abolition of the *Hoju* system;

(c) The ratification by the State party of the Convention on the Rights of Persons with Disabilities;

(d) The ratification of ILO Conventions Nos. 187 and 155 on occupational safety and health;

(e) The changes to the Immigration Control Act to grant humanitarian status holders the right to work and provide asylum-seekers with the possibility of applying for a work permit;

(f) The expansion of free and compulsory education to include secondary education, in 2004;

(g) The introduction of a pilot green mileage system as an alternative to corporal punishment in schools;

(h) The use of cultural voucher programmes to facilitate access to cultural performances for low-income individuals and families.

C. Factors and difficulties impeding the implementation of the Covenant

446. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

447. The Committee is concerned that the Covenant has not yet been fully incorporated into domestic law despite the Committee's concluding observations in 2001 (E/C.12/1/Add.59). The Committee remains concerned that:

(a) The scope of economic, social and cultural rights under the Constitution is narrower than in the Covenant;

(b) The Constitution only applies to citizens (art. 3);

(c) Covenant rights have seldom been invoked before, or directly enforced by, domestic courts, tribunals or administrative authorities.

The Committee reiterates its recommendation that the State party accord the Covenant a legal status that would enable it to be invoked directly within the domestic legal system. In this regard, the Committee refers to its general comment No. 9 (1998) on the domestic application of the Covenant. The Committee requests the State party to include detailed information on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights in its next periodic report.

448. The Committee is concerned that the target for official development assistance (ODA) of the State party for 2015 is well below the internationally agreed target of 0.7 per cent of GDP (art. 2.1) and that bilateral aid is still partially tied, while noting with appreciation the pace of economic development achieved in the State party that has enabled it to become an aid donor country, as well as the information that the State party plans to continue its steady increase in ODA.

The Committee recommends that the State party step up its efforts to increase its ODA target in line with the internationally agreed commitment of 0.7 per cent of GDP by 2015. In this respect, the Committee recommends that the State party take on board the recommendations made by the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD) concerning the increase of the grant element of bilateral ODA commitments to least developed countries in the State party's aid portfolio.

449. The Committee is concerned about the limited jurisdiction of the National Human Rights Commission of Korea over Covenant rights and the lack of its investigative power. The Committee is deeply concerned about the downsizing of the Commission by 21 per cent, whereas for all other ministries, it has been of 2 per cent at the most. The Committee is particularly concerned about recent developments in the State party that have put the independence of the Commission under severe pressure.

The Committee reminds the State party of its responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles. The Committee also recommends that the State party:

(a) Strengthen and expand the mandate of the Commission to cover all Covenant rights;

(b) Allocate adequate human and financial resources, including human rights experts, in accordance with the National Human Rights Commission of Korea Act;

(c) Allow individuals to file complaints on violations of economic, cultural and social rights directly to the Commission.

450. The Committee is concerned that a comprehensive anti-discrimination law has still not been adopted by the State party owing to the fact that the anti-discrimination bill submitted to the seventeenth National Assembly in December 2007 was discarded without consideration. The Committee is also concerned that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds, but rather stipulates a list of typical anti-discrimination grounds as an example, and that it only contains certain grounds for discrimination, excluding others that had been indicated in the original bill, such as nationality and sexual orientation (art. 2).

The Committee urges the State party to adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2).

451. The Committee is concerned about the difficulties faced by applicants for refugee and asylum status because of the long waiting periods while their applications are processed. The Committee remains concerned about the extremely low rate of recognition of refugees and asylum-seekers by the State party, and by the still lengthy status recognition process.

The Committee recommends that the State party make more efforts to shorten waiting periods for the recognition of refugee and asylum-seeker status by:

(a) Providing adequate resources for the implementation of the revised Immigration Control Act and relevant enforcement decree, including by increasing the number of immigration officers;

(b) Standardizing asylum procedures;

(c) Systematically collecting data on refugees and asylum-seekers.

The Committee requests the State party to include information on the measures taken in this regard, including statistics on the granting of refugee and asylum status, in its next periodic report.

452. The Committee, while recognizing the positive steps taken by the State party, is concerned that changes in the competences of, and resource allocation for, the Ministry of Gender Equality have negatively affected women's substantive enjoyment of equality (art. 2).

The Committee reiterates its previous concluding recommendation that the State party provide an adequate institutional framework and allocate the necessary resources to enable the Ministry of Gender Equality to function effectively and to consistently apply a gender perspective to legislation and programmes. The Committee urges the State party to undertake, as a matter of priority, a comprehensive review of its legislation with a view to ensuring de jure and de facto equality between men and women in all fields of life, as provided for in article 2, paragraph 2, and article 3 of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment

of all economic, social and cultural rights, and requests the State party to provide, in its next periodic report, detailed information on the progress made in this respect.

453. The Committee remains concerned that foreign spouses married to Korean nationals are still dependent on the latter for their residency status (F-2) (art. 2).

The Committee recommends that the State party make more efforts to overcome the discrimination faced by foreign women married to Korean nationals by allowing them to acquire residency status or naturalization without being dependent on their husbands.

454. The Committee remains concerned that, in spite of the amendments made to the Civil Law, in particular the abolition of the *Hoju* system, discrimination against women is still present in many fields of life. The Committee reiterates its concern over the persisting wage gap between men and women, the low percentage of women in high-ranking positions in political and public life, and occupational sex segregation. The Committee is also concerned by the low rate of labour market participation of women in the State party, which is lower than the OECD average, despite high female enrolment in tertiary education. The Committee also notes with concern that the decreasing fertility rate of women in the State party may be a reflection of the difficulties they face when they wish to reconcile professional and family life (art. 3).

The Committee recommends that the State party:

(a) Take the necessary legislative and policy measures to ensure that the alternative family registry system guarantees gender equality, individual dignity, and privacy;

(b) Consider institutional arrangements, such as tax reductions and social security incentives, to allow men and women to reconcile professional and family life;

(c) Encourage men to participate in family care through, inter alia, policy incentives such as paternity and parental leave;

(d) Permit flexible work schedules that allow men and women to combine paid work with their family responsibilities;

(e) Expand the network of social services, including childcare facilities, such as public day-care centres and school lunches.

455. The Committee is concerned at the lack of employment opportunities in the State party, in particular for young persons and women. The Committee regrets that information provided on national policies for youth employment was not sufficiently detailed (art. 6).

The Committee recommends that the State party promote greater employment of women and young persons, who are underrepresented in the labour force. It also recommends that the State party take all necessary measures to reach the target of 55 per cent participation of women in the labour market by 2010, stepping up its efforts to create sustainable jobs and to provide support, adequate training and retraining for women to re-enter the labour market after child-rearing and career breaks. The Committee also recommends that the State party create employment opportunities for young persons by

strengthening vocational training activities that are adequate to market demand.

456. The Committee is concerned that 34.9 per cent of the total workforce is made up of non-regular workers, that 44.1 per cent of women workers are non-regular, and that most workers in the Special Economic Zones are non-regular. The Committee is also concerned:

(a) That the monthly income of a non-regular worker is about half that of a regular worker;

(b) That working conditions and social insurance of non-regular and dispatched workers are inadequate;

(c) At the increase in the number of the above-mentioned workers, and the fact that they run the risk of being summarily dismissed before ending their two-year work contract, making it impossible for them to become regular workers;

(d) That safeguards to protect non-regular workers from unfair dismissal are not effective (art. 7).

The Committee recommends that the State party conclude expeditiously its assessment of the situation of non-regular and dispatched workers. The Committee strongly recommends that non-regular workers be entitled to:

(a) Equal pay for work of equal value;

(b) Adequate social insurance coverage;

(c) Labour law protection, including severance pay, vacation and overtime;

(d) Safeguards against unfair dismissal.

457. The Committee remains concerned that an increasing number of workers are not entitled to the minimum wage and that the minimum wage legislation does not apply to all sectors, in spite of the amendment to the Minimum Wage Act in 2005, which expanded the application of the legal minimum wage (art. 7).

The Committee recommends that the State party take all appropriate measures to ensure that the minimum wage is effectively enforced and that it provide workers and their families with an adequate standard of living in accordance with article 7, paragraph (a) (ii), of the Covenant. The Committee also recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it still does not apply and intensify its efforts to enforce legal minimum wages through increased labour inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation. The Committee further recommends that the State party ensure that changes in the calculation of the minimum wage to take into account deductions for meals and accommodation presently under consideration do not disproportionately affect migrant workers.

458. The Committee is concerned that:

(a) There continues to be a lack of understanding on what constitutes sexual harassment at work;

(b) Sexual harassment at work is not criminalized;

(c) Victims rarely seek redress for fear of losing their job or their immigration status;

(d) Sexual harassment is often covered up during case proceedings.

The Committee strongly recommends that the State party adopt and implement legislation that criminalizes sexual harassment in the workplace, and set up mechanisms to monitor such implementation. The Committee also recommends that the State party give sufficient authority to the public organizations dealing with sexual harassment in the workplace to impose punitive measures and compensate its victims. It also recommends that the State party continue to promote public awareness of the criminal nature of sexual harassment.

459. The Committee is concerned about the high number of industrial accidents in the State party and the insufficient number of labour inspectors. It is also concerned at allegations that labour inspections focus on the immigration status of workers rather than on occupational safety and working conditions (art. 7).

The Committee recommends that the State party increase the number of labour inspectors and provide adequate training on occupational safety and working conditions to labour inspectors, employers and employees.

460. The Committee reiterates its concern that, according to article 33 of the Constitution, only certain public officials as designated by law may enjoy trade union rights. The Committee takes note of the measures taken by the State party to ensure the rights of Government workers and professors. However, the Committee reiterates its concern that trade unions in public and private universities are prohibited by law and that the Korean Professor's Union, formed in 2001, has not been accepted, in direct contravention of article 8 of the Covenant (art. 8).

The Committee recommends that the legislation on civil service be amended with a view to lifting the restrictions imposed on the right of civil servants to join a trade union and to strike in conformity with the comments made by the Committee of Experts of the International Labour Organization (ILO) in 2001, on the Convention concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87).

461. The Committee is greatly concerned about the frequent prosecution of workers with regard to labour management relations and the excessive use of force demonstrated against striking workers, mainly on the grounds of article 314 of the Penal Code regarding "obstruction of business". The Committee reiterates its concern that trade union rights are not adequately guaranteed in the State party (art. 8).

The Committee strongly recommends that the State party guarantee the right of all persons to form and join trade unions freely, the right to engage in collective bargaining through trade unions and the right to strike by refraining from the use of the "obstruction of business" clause as a systematic recourse to weaken the right to strike, and also from the use of force beyond that which is absolutely necessary to maintain public order. The Committee also recommends that the State party consider ratifying ILO Conventions concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87) and the Application of the Principles of the Right to Organise and to Bargain Collectively (Convention No. 98).

462. The Committee is concerned that migrant workers are subject to exploitation, discrimination and unpaid wages.

The Committee recommends that the employment permit system that has already recognized migrant workers as workers entitled to labour law protection be further reviewed. It also recommends that particular attention be paid to the fact that the three-month period stipulated for a change in job is highly insufficient. This is especially true in the current economic situation, in which migrant workers often have little choice but to accept jobs with unfavourable work conditions just to retain a regular work status. The Committee further recommends that the State party uphold the High Court's decision to grant legal status to the Migrants' Trade Union.

463. The Committee is concerned that the rapid pace of economic growth — of unprecedented proportions in Asia — that has turned the country into the twelfth-largest economy has not been matched by greater fulfilment of economic, social and cultural rights, in particular for the most disadvantaged and marginalized individuals and groups. In this regard, the Committee is concerned that 8.2 per cent of the total population, and in particular some disadvantaged and marginalized individuals and groups, are excluded from the national basic livelihood security system, which, in principle, guarantees a "national minimum" to people living in the most disadvantaged conditions, in the absence of an established national social safety net. The Committee is therefore concerned at inadequate public social expenditure and the high level of privatization of social services, including health care, education, water and electricity supplies, which has led to greater difficulties in the access and use of such services by the most disadvantaged and marginalized individuals and groups.

The Committee, noting the information provided by the State party that the national basic livelihood security system is under review in relation to the "duty to support" standard or wealth standard and universal access to the system, urges the State party to conclude the review expeditiously and guarantee access to the system for persons that have not completed a minimum period of stable living, including the homeless and those living in shelters.

464. The Committee reiterates its concern regarding the large number of older persons who only benefit partially from the national pension system. This concern is enhanced by the fact that the State party has one of the highest levels of self-employment in the world and that it will take only 22 years for the share of the population aged over 60 to double from 7 to 14 per cent (art. 9).

The Committee recommends that the State party envisage alternative or complementary policies to the national pension system, such as a universal minimum pension or other social assistance benefits that would enable elderly persons to live a decent life.

465. The Committee remains concerned that there is still inadequate protection for victims of domestic violence. The Committee is also concerned that the rate of mandatory reporting of domestic violence is very low, that legal action against perpetrators is seldom taken and that a number of settled cases have resulted in non-prosecution (art. 10).

The Committee recommends that the State party take all necessary measures, legislative or otherwise, to address domestic violence adequately. In particular,

it recommends that the State party continue to increase awareness of the criminal nature of domestic violence, bring perpetrators to trial and conviction, and strengthen counselling programmes. It also recommends that the State party increase shelters and psychosocial support services for victims.

466. The Committee is concerned that, notwithstanding the fact that State party legislation penalizes trafficking not only for prostitution or sexual exploitation but for any purpose of profit, a high number of women and children continue to be trafficked from, through and within the country for the purposes of sexual exploitation and forced labour, especially women workers originally arriving on an E-6 visa (entertainment). The Committee is particularly concerned about the low rate of prosecution and conviction of traffickers (art. 10).

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for any purpose, by, inter alia:

(a) Strengthening the monitoring of issuances of E-6 visas;

(b) Supporting programmes and information campaigns to prevent trafficking;

(c) Providing mandatory training for law enforcement officials, prosecutors and judges on anti-trafficking legislation;

(d) Increasing the provision of medical, psychological and legal support to victims;

(e) Ensuring an effective complaint mechanism for migrant workers, regardless of their immigration status;

(f) Fully investigating cases of human trafficking and ensuring justice.

467. The Committee notes with concern that, in spite of a high GDP growth rate, the extent and depth of poverty continue to increase (art. 11).

The Committee recommends that the State party allocate sufficient funds for the full implementation of its poverty eradication strategy. While noting the existence of a formal poverty line to determine the minimum cost of living, the Committee recommends that the State party monitor effectively the impact of its poverty eradication strategy on disadvantaged and marginalized individuals and groups. The Committee urges the State party to ensure the full integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). The Committee requests the State party to include in its next periodic report detailed information on the results of the measures taken under the strategy, including updated statistical data, on an annual basis, on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single parent households, rural/urban population and ethnic group.

468. The Committee is concerned that the State party has no strategy to address the problem of homelessness, to examine its extent and causes and to ensure an adequate standard of living for the homeless.

The Committee urges the State party to adopt a strategy to address the problem of homelessness, after examining its extent and causes and ensuring an adequate standard of living for the homeless. The Committee invites the State party to include in its next periodic report data on the extent of homelessness in the State party, disaggregated by sex, age and rural/urban populations.

469. The Committee is deeply concerned that, according to the population and housing census of 2005, 2,06 million households (13 per cent of all households surveyed) were living below minimum housing standards. The Committee is also concerned about the system of public leasing houses (art. 11).

The Committee reiterates its recommendation that the State party establish a focal point in the Government to deal with complaints or appeals for assistance on housing matters. It also recommends that the State party allocate sufficient funds for the realization of programmes aimed at providing security of tenure and affordable housing, particularly to the most disadvantaged and marginalized individuals and groups, in line with its general comment No. 4 (1991) on the right to adequate housing. The Committee strongly recommends in this regard that priority be given to those who are homeless or living in exceptionally substandard conditions. The Committee also recommends that the State party provide detailed information with data disaggregated on an annual basis by gender, age and households.

470. The Committee is deeply concerned at the lack of effective consultation of, and legal redress for, persons affected by or likely to be affected by forced removal or forced evictions and the lack of sufficient compensation or adequate relocation sites for individuals and families who have been forcibly removed. The Committee also regrets that the State party report did not contain sufficient information on the extent of forced evictions carried out in the State party, in particular as a result of the enormous scale of development projects (art. 11).

The Committee recommends that forced eviction be used only as a measure of last resort and that no project of development or urban renewal be carried out without prior notification and access to temporary housing for those affected so as to avoid recourse to violence, such as that seen in the *Yongsan* incident.

The Committee urges the State party, as a matter of priority, and in line with its general comment No. 7 on forced evictions:

(a) To ensure that persons forcibly evicted from their homes be provided with adequate compensation and/or offered relocation;

(b) To undertake public debate and meaningful consultations with affected residents and communities prior to the implementation of development projects and residential environment clearance plans;

(c) To ensure that new housing sites are provided with basic services and utilities, such as drinking water, electricity, washing and sanitation facilities, and easy access to schools, health-care centres and transportation;

(d) To provide detailed information on forced evictions with data disaggregated on an annual basis by gender, age and households in its next periodic report.

471. The Committee is concerned that, despite the medical benefit programme, disadvantaged and marginalized individuals do not have adequate access to medical services in privately run hospitals, which constitute 90 per cent of all hospitals. The Committee is also concerned that the national health insurance scheme only covers around 65 per cent of total medical expenses and that, as a result, out-of-pocket payments are substantial (art. 12).

The Committee urges the State party to increase expenditure for health care and to take all appropriate measures to ensure universal access to health care, at prices that are affordable to everyone, and draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health.

472. The Committee is concerned that, despite mandatory sex education programmes, there is a lack of systematic and accurate education on sexual and reproductive health in schools. The Committee is also concerned that a number of pregnant teenagers drop out of the school system and turn to abortion owing to the stigma attached to unwed mothers.

The Committee recommends that the State party implement its mandatory sex education programme in schools in a systematic manner, and that it include information on sexual and reproductive health and the use of contraceptive methods. The Committee also recommends that the State party provide financial and psychological support for unwed mothers and promote information campaigns to combat deep societal prejudice against them.

473. The Committee is concerned about reports on the contamination of village waterworks by radioactive agents, exceeding safety standards for drinking water. It is also concerned that companies commercializing bottled water are using groundwater resources that local communities need for farming and drinking. The Committee is further concerned at the failure to disclose the existence of carcinogenic substances in bottled drinking water.

The Committee recommends that the State party take effective measures to ensure that local communities are not deprived of groundwater resources needed for farming and drinking purposes. It also recommends that the State party ensure that adequate information on health hazards relating to the bottled drinking water that was found to contain carcinogenic substances is made available to the public. The Committee further recommends that the State party effectively implement adopted World Health Organization standards on drinking water quality and take into account the Committee's general comment No. 14 on the right to the highest attainable standard of physical and mental health, and general comment No. 15 (2002) on the right to water, in the information provided in its next periodic report (art. 11).

474. The Committee is concerned about the high associated costs of education required to be paid by parents. It is also concerned about information regarding the deepening inequality in education and the fact that the chances of entering a high-level university for students are often determined by their parents' ability to afford after-school tutoring or private education.

The Committee recommends that the State party accelerate its efforts to ensure that education is equally accessible to all and without discrimination, on the basis of ability, not financial capacity. It also recommends that the State party,

having recognized that excessive expenditure on private education imposes great burdens on the household economy and has been the major cause of decline in quality of life for the middle class, strengthen the public education system and provide financial support to low-income families to cover the associated costs of education (art. 13).

475. The Committee is concerned at the increase in clinical depression and attention deficit hyperactivity disorder cases among students caused by extreme competition and academic stress (arts. 12, 13).

The Committee recommends that the State party:

(a) Implement the decision by the Constitutional Court on the limitation of functioning hours of privately run cram schools;

(b) Set up pilot alternative learning models;

(c) Educate parents and the general public about the long-term effects of the overburdening of children with schoolwork;

(d) Curb the operation of private night schools and cram schools;

(e) Reassess the *Iljegosa* system, which creates unnecessary competition between schools and limits the choice of study paths in higher education.

476. The Committee is concerned about the absence of self-regulation and diversity in university education in arts and culture, following the request of the Ministry of Culture, Sports and Tourism to the Korean National University of Arts to solely concentrate on "practical education".

The Committee, while noting the information provided by the State party on the need for general audits, recommends that universities be guaranteed the freedom to exercise fully their academic authority and control their curriculum and teaching methods.

477. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.

478. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

479. The Committee encourages the State party to consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

480. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee (E/C.12/2008/2), by 30 June 2014.

Chapter VI

Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

A. Adoption of general comment No. 20 on non-discrimination in economic, social and cultural rights

481. At its 17th and 18th meetings, held on 14 May 2009 (forty-second session), the Committee discussed its draft general comment on non-discrimination in the enjoyment of economic, social and cultural rights. At its 21st meeting on 18 May 2009, the Committee adopted its general comment No. 20 (article 2, paragraph 2, of the Covenant). The full text of the general comment is contained in annex VI of the present report.

B. Adoption of general comment No. 21 on the right of everyone to take part in cultural life

482. At its 45th, 46th and 47th meetings held on 12 and 13 November (forty-third session), the Committee discussed its draft general comment on the right of everyone to take part in cultural life. At its 47th meeting held on 13 November 2009, the Committee adopted its general comment No. 21 (article 15, paragraph 1 (a), of the Covenant). The full text of the general comment is contained in annex VII of the present report.

C. Interactive dialogue with the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation

483. At its 19th meeting on 15 May 2009, the Committee met in a private session with Ms. Catarina Albuquerque, the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation. After having presented her main tasks (compendium of good practices, clarification of human rights obligations in relation to safe drinking water and sanitation, recommendation on the realization of Millennium Development Goals), the independent expert explained to the Committee members the reasons why sanitation had been the main focus of her mandate in 2009. For this purpose she had held a consultation with diverse experts in Geneva in April 2009 and used that occasion to define sanitation in human rights terms as well as the States' obligations in this regard. During the exchange with the Committee members the following issues were raised:

(a) Water pollution and the challenges posed by climate change on the availability of water;

(b) The increasing privatization of services which provide water and its impact on the cost of water especially for the most vulnerable;

(c) The need for the Committee to pay increased attention to sanitation, to encourage national strategies to be adopted and to build specific jurisprudence on this issue;

(d) The consequences which sanitation may have on the right to health but also on the rights to education, and on the prohibition of torture and inhumane treatment;

(e) The linkages between sanitation and the right to water and housing;

(f) The standards to apply in terms of sanitation and the concrete means to monitor sanitation.

D. Information session on sexual and reproductive health rights

484. At its 49th meeting on 16 November 2009, the Committee met in private to participate in an information session on the right to sexual and reproductive health organized by the United Nations Population Fund (UNFPA) and with participation of the World Health Organization (WHO). The meeting was opened by the Chairperson of the Committee, followed by introductory remarks by Ms. Rocio Barahona, Rapporteur for the general comment on the right to sexual and reproductive health. The Committee heard briefings on: overview of the situation of sexual and reproductive health around the world and main areas of concern from Hedia Belhadj and Henia Dakkak (UNFPA); selected issues in sexual and reproductive health in the context of evolving human rights standards from Catherine d'Arcangues and Eszter Kismodi (WHO) and on international human rights standards on sexual and reproductive health from Ximena Andión and Laura Katzive (Center for Reproductive Rights). The Committee members also had the opportunity to exchange views and ask questions on the subject matter.

485. The key issues highlighted include: right to information, access to family planning, emergency care, neonatal care, legality of abortion on some grounds, barriers to maternal health, female genital mutilation, and contraception. The guest speakers noted that although spending for health in general has increased, spending for sexual and reproductive health has stagnated worldwide. It was generally acknowledged at the meeting that the issues of sexual and reproductive health are complex and are affected by cultural, economic and other factors.

E. Cooperation with specialized agencies: tenth meeting of the Joint Expert Group UNESCO (Committee on Conventions and Recommendations)/Economic and Social Council (Committee on Economic, Social and Cultural Rights) on the Monitoring of the Right to Education

486. The UNESCO (Committee on Conventions and Recommendations)/ ECOSOC (Committee on Economic, Social and Cultural Rights) Joint Expert Group on the Monitoring of the Right to Education held its tenth meeting on 8 May 2009 in Paris. Two members of the Committee, namely Mr. Eibe Riedel and Ms. Virginia Bonoan-Dandan participated in the meeting. From UNESCO, Mr. Brian Figaji took part in the consultation. The meeting was also attended by Linda King, Kishore Singh, Rolla Moumné, Ms. Andriamiseza Ingarao, Ms. Dorsi, Ms. Ameganvi (UNESCO)

and a representative of OHCHR. Observers were sent from the Permanent Delegations of the Republic of Korea, Madagascar, Hungary and Portugal. The theme of the discussion was "mother tongue education, multilinguism, and the right to education", for which a discussion note had been prepared by UNESCO, focusing on relevant international norms in United Nations and UNESCO conventions and how these are operationalized at the international and national levels. Judicial enforcement by national courts was also discussed. Key issues identified by the Joint Expert Group include: education in mother tongue and multilingual education, in particular with regard to human rights education, access to learning materials in national languages, linguistic rights of minorities, and respect for and promotion of indigenous languages. On 25 September, an informal follow-up discussion was held in Paris between Mr. Eibe Riedel, Mr. Brian Figaji and Mr. Kishore Singh, with a view to finalizing the report of the 10th meeting and to discussing future activities of the Joint Expert Group. The report of the 10th meeting of the Joint Expert Group can be found in annex VIII to the present report.

F. Expert seminar on the Optional Protocol to the International Covenant on Economic, Social and Cultural rights

487. On 20 December 2008, the United Nations General Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights ("the Optional Protocol"), contained in resolution 63/117. This instrument was opened for signature and ratification at an event in New York on 24 September 2009. So far 30 signatures have been submitted. The expansion of the Committee's functions to include the receiving of individual communications requires learning from existing practices from other treaty bodies, as well as from national and regional human rights mechanisms, in order to enable the Committee to appropriately perform its new duties. Taking into consideration these new Committee functions, OHCHR organized a three-day seminar on the justiciability of economic, social and cultural rights and the Optional Protocol for Committee members. The seminar was held from 28 to 29 October 2009, and the discussion on the rules of procedures on 30 October.

488. The objective of the seminar was to discuss the most important substantive and procedural issues raised by litigation in the field of economic, social and cultural rights in the context of a thorough overview of relevant comparative experiences in this area. The seminar was supported by eight experts in the adjudication of ESCR at the national, regional and international levels, such as members of international and regional human rights mechanisms, national judiciary and practitioners, as well as by the OHCHR experts in relevant substantive areas and procedures. Speakers prepared presentations on the standards of adjudication in the area of economic, social and cultural rights, procedural issues and examples of key litigation on specific rights. The third day focused on the relevant rules of procedure and organization of the work of the Committee in the context of its new functions.

Programme — Implementation of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Future role of the Committee on Economic, Social and Cultural Rights, 28-30 October 2009, Palais Wilson

Wednesday, 28 October 2009

10.00-10.50	Introduction
	Chair: Mr. Bacre Waly Ndiaye, Director of the Human Rights Council and Treaties Division
10.00-10.10	Welcome speech, Ms. Kyung-wha Kang, Deputy High Commissioner, OHCHR
10.10-10.20	Remarks, Mr. Jaime Marchan Romero, Chairperson of the Committee
10.20-10.35	Evolution of the Optional Protocol to the Covenant, Mr. Philippe Texier, Committee member
10.35-10.50	Introduction to the Optional Protocol, Mr. Eibe Riedel, Committee member
10.50-13.00	Session 1: Standards of adjudication for economic, social and cultural rights
	Chair: Mr. Bacre Waly Ndiaye, Director of the Human Rights Council and Treaties Division
10.50-11.10	"The use of economic, social and cultural rights minimum core/vital minimum standards by the Colombian Constitutional Court", Mr. Eduardo Cifuentes, Universidad de los Andes, Colombia
11.10-11.20	"The South African Constitutional Court and the application of 'reasonableness' to economic, social and cultural rights", presentation by Research and Right to Development Division, OHCHR
11.20-12.45	Discussion
12.45-13.00	Practical items — Secretariat
13.00-15.00	Lunch Break
15.00-18.00	Session 2: Outstanding issues in the consideration of complex economic, social and cultural rights cases
	Chair: Mr. Markus Schmidt, Chief, Petitions Unit, Human Rights Treaties Branch

15.00-15.20	"How have United States state courts assessed the adequacy of public education? Substantive and procedural issues", Mr. Michael Rebell, Columbia University, United States
15.20-15.40	"The experience of the European Committee of Social Rights in the adjudication of collective complaints. Lessons learned", Ms. Polonca Koncar, Chairperson, European Committee of Social Rights
16.00-18.00	Discussion and wrap-up of the day's proceedings

Thursday, 29 October 2009

10.00-13.00	Session 2: Outstanding issues in the consideration of complex economic, social and cultural rights cases (continued) Chair: Mr. Ibrahim Salama, Chief, Human Rights Treaties Branch
10.00-10.20	"The Argentine Supreme Court experience with collective economic, social and cultural rights cases: new procedural developments", Mr. Lorenzetti, Chief Justice, Supreme Court of Argentina
10.20-10.40	"Public interest litigation and the Indian judicial experience in dealing with collective economic, social and cultural rights cases", Mr. Babu Mathew, Country Director, Action Aid, India
10.40-11.00	"The Experience of the African Commission of Human and Peoples Rights", Ms. Angela Melo, Director, Division of Human Rights, Human Security and Philosophy, UNESCO
11.00-13.00	Discussion
13.00-15.00	Lunch Break
15.00-18.00	Session 3: Examples of emblematic litigation and judicial standards on specific rights Chair: Mr. Ibrahim Wani, Development and Economic and Social Issues Branch
15.00-15.15	Mr. Michael Rebell — Education
15.15-15.30	Mr. Lorenzetti — Social security/labour
15.30-15.45	Mr. Cifuentes — Health
15.45-16.00	Mr. Flinterman — Adjudication of economic, social and cultural rights in the context of gender — The Committee on the Elimination of Discrimination against Women experience
16.00-16.15	Mr. Mathew — Food, poverty, environment
16.15-17.15	Discussion
17.15-18.00	Closing remarks

Friday, 30 October 2009	
10.00-10.15	Opening
	Markus Schmidt, Chief, Petitions Unit, Human Rights Treaties Branch
10.15-10.45	General Presentation on the Complaints Mechanisms (as well as inquiries and inter-State complaints) of the Treaty Bodies
	Marie-Eve Friedrich, Human Rights Officer, Petitions Unit, Human Rights Treaties Branch
10.45-11.30	Discussion
11.30-12.00	Specific features of the Optional Protocol to the Covenant
	Nathalie Stadelman, Human Rights Officer, Petitions Unit, Human Rights Treaties Branch
	Discussant: Christian Courtis, Human Rights Officer, HRESI Unit, Research and Right to Development Branch
12.00-13.00	Discussion
13.00-15.00	Lunch Break
15.00-15.30	Jurisprudence of the treaty bodies: Economic, social and cultural rights
	Ivo Petrov, Human Rights Officer, Petitions Unit
15.30-16.00	Discussion
16.00-16.30	Structure of the Rules of Procedure — Key Elements
	Markus Schmidt, Chief, Petitions Unit, Human Rights Treaties Branch
16.30-18.00	Discussion Wrap-up — next steps?

Chapter VII

Additional decisions adopted and matters discussed by the Committee at its forty-second and forty-third sessions

A. Participation in intersessional meetings

489. At its forty-second and forty-third sessions, the Committee decided that the following members would represent the Committee in the various intersessional meetings that would take place over the course of the year:

(a) Twenty-first meeting of chairpersons (2-3 July 2009): Mr. Jaime Marchan-Romero (as Chairperson);

(b) Ninth inter-committee meeting (29 June-1 July 2009): Mr. Waleed Sadi and Mr. Mohammed Abdel-Moneim, and Mr. Jaime Marchan Romero (as Chairperson);

(c) Tenth inter-committee meeting (30 November-2 December 2009): Mr. Jaime Marchan-Romero and Ms. Maria Virginia Bras Gomes;

(d) Forum on Minority Issues (12-13 November 2009): Mr. Azzouz Kerdoun;

(e) Social Forum (31 August-2 September 2009): Ms. Maria Virginia Bras Gomes.

B. Future general comments

490. At its 57th meeting, on 20 November 2009 (forty-third session), the Committee decided that the Committee would continue to elaborate on a general comment on sexual and reproductive health (article 12 of the Covenant), with Ms. Rocio Barahona Riera as Rapporteur. The Committee also considered beginning work on a general comment on article 10 of the Covenant, with Mr. Waleed Sadi as Rapporteur.

C. Future statements

491. At its 57th meeting, on 20 November 2009 (forty-third session), as proposed by the Rapporteur, Mr. Zdzislaw Kedzia, the Committee would begin a preliminary exploration of a statement on the corporate sector and economic, social and cultural rights.

D. Cooperation with specialized agencies

492. At its forty-third session, on 26 November 2009, the Committee held an informal meeting with members of the ILO Committee of Experts on the Application of Conventions and Recommendations. This was the seventh meeting between the two monitoring bodies with the aim of strengthening cooperation between them. The meeting, which was hosted by the Friedrich Ebert Foundation, also included representatives of the European Committee of Social Rights. The topic of the meeting was "Social security, social assistance and protection against

poverty". The Committee on Economic, Social and Cultural Rights had adopted a general comment on the right to social security in 2008. The European Committee of Social Rights has just concluded the reporting cycle on provisions related to social security and issued conclusions to the States concerned. The ILO Committee of Experts included in its 2008 general report a chapter on social security in time of global financial crisis. They also commenced a general survey on social security in 2009. Based on these processes, the "trilateral" meeting provided an opportunity to share experiences with a view to promoting coherent and mutually reinforcing approaches in promoting social security for all.

E. Working methods of the Committee

493. At its 50th meeting, on 16 November 2009 (forty-third session), the Committee discussed its working methods based on non-papers prepared by individual Committee members. The Committee identified a number of pending issues that need to be further discussed and resolved, to more effectively manage time and resources and to enhance the effectiveness of the Committee's work. The Committee reiterated its earlier practice to consider only five States parties' reports every session and to devote three meetings to the consideration of each State party report, unless otherwise advised by the Bureau or the pre-sessional Working Group, based on specific considerations.

494. The Committee also reiterated the need for additional sessions in 2011 and 2012 to manage the severe backlog in consideration of States parties' reports. Other issues that the Committee covered in its discussions included the next reporting round and date for submission of the next State party report, and the role of the Country Rapporteur.

495. The Committee decided to resume discussions of the working methods at the next session in May 2010.

Chapter VIII

Other activities of the Committee in 2009

A. Seminar on the global land grab and human rights

496. On 16 May 2009, some Committee members attended a seminar on "The Global Land Grab: A Human Rights Approach" held at the Graduate Institute of International and Development Studies in Geneva. The programme covered such topics as the large-scale acquisition of foreign agricultural land: causes and consequences, the local and national consequences of land grabbing and potential effects of the deals on human rights, responses and resistance to the global land grab and rights-based approaches regarding communities' access to land. Some of the key questions raised were: (a) How might investment houses acquiring agricultural land be held accountable? (b) How could States that have not signed international human rights covenants be held to account? and (c) How can States with serious food production problems secure future food supplies in ways that do not undermine human rights in other countries?

B. Informal consultation on human rights and climate change

497. On 18 May 2009, the Committee members were invited to an informal consultation on Human Rights and Climate Change organized jointly by Friedrich Ebert Stiftung (FES) and The Center for International Environmental Law (CIEL) in Geneva. The meeting was also attended by representatives from the International Council on Human Rights Policy and the former Special Rapporteur on adequate housing. The consultation was planned in light of the implications of climate change on the enjoyment of human rights and to further explore the study prepared by OHCHR on the subject (A/HRC/10/61). The consultation aimed to explore how the Committee could promote human rights in the climate debate, which until now has not been very attentive to human rights concerns. The meeting was attended by 12 Committee members and benefited from a number of presentations by experts from various institutions.

Chapter IX

Adoption of the report

498. At its 57th meeting, held on 20 November 2009, the Committee considered its draft report to the Economic and Social Council on the work of its forty-second and forty-third sessions (E/2010/22/CRP.1-3). The Committee adopted the report as amended during the discussions.

Annex I

Members of the Committee on Economic, Social and Cultural Rights

Name of member	*Country of nationality*	*Term expires on 31 December*
Mr. Mohamed Ezzeldin Abdel-Moneim	Egypt	2012
Mr. Clement Atangana	Cameroon	2010
Ms. Rocio Barahona Riera	Costa Rica	2012
Ms. Virginia Bonoan-Dandan	Philippines	2010
Ms. Maria Virginia Bras Gomes	Portugal	2010
Mr. Chandrashekar Dasgupta	India	2010
Mr. Azzouz Kerdoun	Algeria	2010
Mr. Yuri Kolosov	Russian Federation	2010
Mr. Zdzislaw Kedzia	Poland	2012
Mr. Jaime Marchan-Romero	Ecuador	2010
Mr. Sergei Martynov	Belarus	2012
Mr. Ariranga Govindasamy Pillay	Mauritius	2012
Mr. Eibe Riedel	Germany	2010
Mr. Nikolaas Jan Schrijver	Netherlands	2012
Mr. Waleed Sadi	Jordan	2012
Mr. Philippe Texier	France	2012
Mr. Alvaro Tirado Mejia	Colombia	2010
Mr. Daode Zhan	China	2012

Annex II

A. Agenda of the forty-second session of the Committee on Economic, Social and Cultural Rights (4-22 May 2009)

1. Opening of the session.
2. Election of the Chairperson and other officers of the Committee.
3. Adoption of the agenda.
4. Organization of work.
5. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights.
6. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant.
7. Relations with United Nations organs and other treaty bodies.
8. Consideration of reports:
    (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant;
    (b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant.
9. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant.
10. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies.
11. Miscellaneous matters.

B. Agenda of the forty-third session of the Committee on Economic, Social and Cultural Rights (2-20 November 2009)

1. Adoption of the agenda.
2. Organization of work.
3. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights.
4. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant.
5. Relations with United Nations organs and other treaty bodies.
6. Consideration of reports:
    (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant;

   (b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant.

7. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant.

8. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies.

9. Adoption of the annual report.

10. Miscellaneous matters.

Annex III

List of general comments adopted by the Committee on Economic, Social and Cultural Rights

The general comments adopted to date by the Committee appear in the following relevant annual reports of the Committee:

No. 1 (1989)	on reporting by States parties (third session; E/1989/22-E/C.12/1989/5, annex III).
No. 2 (1990)	on international technical assistance measures (article 22 of the Covenant) (fourth session; E/1990/23-E/C.12/1990/3 and Corr.1, annex III).
No. 3 (1990)	on the nature of States parties' obligations (article 2, paragraph 1, of the Covenant) (fifth session; E/1991/23-E/C.12/1990/8 and Corr.1, annex III).
No. 4 (1991)	on the right to adequate housing (article 11, paragraph 1, of the Covenant) (sixth session; E/1992/23-E/C.12/1991/4, annex III).
No. 5 (1994)	on persons with disabilities (eleventh session; E/1995/22-E/C.12/1994/20 and Corr.1, annex IV).
No. 6 (1995)	on the economic, social and cultural rights of older persons (thirteenth session; E/1996/22-E/C.12/1995/18, annex IV).
No. 7 (1997)	on the right to adequate housing (article 11, paragraph 1, of the Covenant): forced evictions (sixteenth session; E/1998/22-E/C.12/1997/10, annex IV).
No. 8 (1997)	on the relationship between economic sanctions and respect for economic, social and cultural rights (seventeenth session; E/1998/22-E/C.12/1997/10, annex V).
No. 9 (1998)	on domestic application of the Covenant (eighteenth session; E/1999/22-E/C.12/1998/26, annex IV).
No. 10 (1998)	on the role of national human rights institutions in the protection of economic, social and cultural rights (nineteenth session; E/1999/22-E/C.12/1998/26, annex V).
No. 11 (1999)	on plans of action for primary education (article 14 of the Covenant) (twentieth session; E/2000/22-E/C.12/1999/11 and Corr.1, annex IV).
No. 12 (1999)	on the right to adequate food (article 11 of the Covenant) (twentieth session; E/2000/22-E/C.12/1999/11 and Corr.1, annex V).
No. 13 (1999)	on the right to education (article 13 of the Covenant) (twenty-first session; E/2000/22-E/C.12/1999/11 and Corr.1, annex VI).

No. 14 (2000)	on the right to the highest attainable standard of health (article 12 of the Covenant) (twenty-second session; E/2001/22-E/C.12/2000/22, annex IV).
No. 15 (2002)	on the right to water (articles 11 and 12 of the Covenant) (twenty-ninth session; E/2003/22-E/C.12/2002/13, annex IV).
No. 16 (2005)	on the equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3 of the Covenant) (thirty-fourth session; E/2006/22-E/C.12/2005/5, annex VIII).
No. 17 (2005)	on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15 (1) (c) of the Covenant) (thirty-fifth session; E/2006/22-E/C.12/2005/5, annex IX).
No. 18 (2005)	on the right to work (article 6 of the Covenant) (thirty-fifth session; E/2006/22-E/C.12/2005/5, annex X).
No. 19 (2007)	on the right to social security (article 9 of the Covenant) (thirty-ninth session; E/2008/22-E/C.12/2007, annex VII).
No. 20 (2009)	on non-discrimination (article 2 of the Covenant) (forty-second session; E/2010/22-E/C.12/2010, annex VI).
No. 21 (2009)	on the right of everyone to take part in cultural life (article 15 of the Covenant) (forty-third session; E/2010/22-E/C.12/2010, annex VII).

Annex IV

List of statements adopted by the Committee on Economic, Social and Cultural Rights

The statements and recommendations, adopted by the Committee to date, appear in its relevant annual reports:

1. Preparatory activities relating to the World Conference on Human Rights: recommendations to the Preparatory Committee for the World Conference (sixth session; E/1992/23-E/C.12/1991/4, chap. IX).

2. Statement to the World Conference on Human Rights on behalf of the Committee (seventh session; E/1993/22-E/C.12/1992/2, annex III).

3. The World Summit for Social Development and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee (tenth session; E/1995/22-E/C.12/1994/20 and Corr.1, annex V).

4. Economic, social and cultural rights in the context of the World Summit for Social Development: Statement of the Committee (eleventh session; E/1995/22-E/C.12/1994/20 and Corr.1, annex VI).

5. Fourth World Conference on Women: Action for Equality, Development and Peace — Statement by the Committee (twelfth session; E/1996/22-E/C.12/1995/18, annex VI).

6. United Nations Conference on Human Settlements (Habitat II): Statement of the Committee (thirteenth session; E/1996/22-E/C.12/1995/18, annex VIII).

7. Globalization and its impact on the enjoyment of economic, social and cultural rights (eighteenth session; E/1999/22-E/C.12/1998/26; chap. VI, sect. A, para. 515).

8. Statement of the Committee to the Third Ministerial Conference of the World Trade Organization (twenty-first session; E/2000/22-E/C.12/1999/11 and Corr.1, annex VII).

9. Statement of the Committee to the Convention to draft a Charter of Fundamental Rights of the European Union (twenty-second session; E/2001/22-E/C.12/2000/21, annex VIII).

10. Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee to the Third United Nations Conference on the Least Developed Countries (twenty-fifth session; E/2002/22-E/C.12/2001/17, annex VII).

11. Statement of the Committee to the special session of the General Assembly for an overall review and appraisal of the implementation of the decisions taken at the United Nations Conference on Human Settlements (Habitat II) (New York, 6-8 June 2001) (twenty-fifth session; E/2002/22-E/C.12/2001/17, annex XI).

12. Statement of the Committee to the International Consultative Conference on School Education in Relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination (twenty-seventh session; E/2002/22-E/C.12/2001/17, annex XII).

13. Statement of the Committee on human rights and intellectual property (twenty-seventh session; E/2002/22-E/C.12/2001/17, annex XIII).

14. Statement of the Committee to the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit for Sustainable Development (Bali, Indonesia, 27 May-7 June 2002) (twenty-eighth session; E/2003/22-E/C.12/2002/13, annex VI).

15. The Millennium Development Goals and economic, social and cultural rights: joint statement by the Committee and the Special Rapporteurs on economic, social and cultural rights of the Commission on Human Rights (twenty-ninth session; E/2003/22-E/C.12/2002/13, annex VII).

16. Statement by the Committee on an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (thirty-eighth session; E/2008/22-E/C.12/2007/1, annex VIII).

17. Statement of the Committee on the world food crisis (fortieth session; E/2009/22-E/C.12/2008/1, annex VI).

Annex V

Days of general discussion held by the Committee on Economic, Social and Cultural Rights

The following issues have been the focus of discussion:

1. The right to food (third session, 1989).
2. The right to housing (fourth session, 1990).
3. Economic and social indicators (sixth session, 1991).
4. The right to take part in cultural life (seventh session, 1992).
5. The rights of the ageing and elderly (eighth session, 1993).
6. The right to health (ninth session, 1993).
7. The role of social safety nets (tenth session, 1994).
8. Human rights education and public information activities (eleventh session, 1994).
9. The interpretation and practical application of the obligations incumbent on States parties (twelfth session, 1995).
10. A draft optional protocol to the Covenant (thirteenth session, 1995, and fourteenth and fifteenth sessions, 1996).
11. Revision of the general guidelines for reporting (sixteenth session, 1997).
12. The normative content of the right to food (seventeenth session, 1997).
13. Globalization and its impact on the enjoyment of economic, social and cultural rights (eighteenth session, 1998).
14. The right to education (nineteenth session, 1998).
15. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (twenty-fourth session, 2000).
16. International consultation on economic, social and cultural rights in development activities of international institutions, organized in cooperation with the High Council for International Cooperation (France) (twenty-fifth session, 2001).
17. Equal right of men and women to the enjoyment of economic, social and cultural rights (article 3 of the Covenant) (twenty-eighth session, 2002).
18. The right to work (article 6 of the Covenant) (thirty-first session, 2003).
19. The right to social security (article 9 of the Covenant) (thirty-sixth session, 2006).

20. The right to take part in cultural life (article 15, paragraph 1 (a), of the Covenant) (fortieth session, 2008).

21. Non-discrimination and economic, social and cultural rights (article 2, paragraph 2, of the Covenant) (forty-first session, 2008).

Annex VI

General comment No. 20
Non-discrimination in economic, social and cultural rights (article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction and basic premises

1. Discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.

2. Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights. Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (the Covenant) obliges each State party "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

3. The principles of non-discrimination and equality are recognized throughout the Covenant. The preamble stresses the "equal and inalienable rights of all" and the Covenant expressly recognizes the rights of "everyone" to the various Covenant rights such as, inter alia, the right to work, just and favourable conditions of work, trade union freedoms, social security, an adequate standard of living, health and education and participation in cultural life.

4. The Covenant also explicitly mentions the principles of non-discrimination and equality with respect to some individual rights. Article 3 requires States to undertake to ensure the equal right of men and women to enjoy the Covenant rights and article 7 includes the "right to equal remuneration for work of equal value" and "equal opportunity for everyone to be promoted" in employment. Article 10 stipulates that, inter alia, mothers should be accorded special protection during a reasonable period before and after childbirth and special measures of protection and assistance should be taken for children and young persons without discrimination. Article 13 recognizes that "primary education shall be compulsory and available free to all" and provides that "higher education shall be made equally accessible to all".

5. The preamble, Articles 1, paragraph 3, and 55, of the Charter of the United Nations and article 2, paragraph 1, of the Universal Declaration of Human Rights prohibit discrimination in the enjoyment of economic, social and cultural rights. International treaties on racial discrimination, discrimination against women and the rights of refugees, stateless persons, children, migrant workers and members of their families, and persons with disabilities include the exercise of economic, social and

cultural rights,[1] while other treaties require the elimination of discrimination in specific fields, such as employment and education.[2] In addition to the common provision on equality and non-discrimination in both the Covenant and the International Covenant on Civil and Political Rights, article 26 of the International Covenant on Civil and Political Rights contains an independent guarantee of equal and effective protection before and of the law.[3]

6. In its previous general comments, the Committee has considered the application of the principle of non-discrimination to specific Covenant rights relating to housing, food, education, health, water, authors' rights, work and social security.[4] Moreover, general comment No. 16 focuses on States parties' obligations under article 3 of the Covenant to ensure equal rights of men and women to the enjoyment of all Covenant rights, while general comments Nos. 5 and 6 respectively concern the rights of persons with disabilities and older persons.[5] The present general comment aims to clarify the Committee's understanding of the provisions of article 2, paragraph 2, of the Covenant, including the scope of State obligations (Part II), the prohibited grounds of discrimination (Part III), and national implementation (Part IV).

II. Scope of State obligations

7. Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing,

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[1] See the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention relating to the Status of Refugees; the Convention relating to the Status of Stateless Persons; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities.

[2] International Labour Organization (ILO) Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation; and the UNESCO Convention against Discrimination in Education.

[3] See Human Rights Committee, general comment No. 18 (1989) on non-discrimination.

[4] Committee on Economic, Social and Cultural Rights, general comments No. 4 (1991) on the right to adequate housing; No. 7 (1997) on the right to adequate housing: forced evictions (art. 11, para. 1); No. 12 (1999) on the right to adequate food; No. 13 (1999) on the right to education (art. 13); No. 14 (2000) on the right to the highest attainable standard of health (art. 12); No. 15 (2002) on the right to water (arts. 11 and 12); No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15, para. 1 (c)); No. 18 (2005) on the right to work (art. 6); and No. 19 (2008) on the right to social security.

[5] Committee on Economic, Social and Cultural Rights, general comments No. 5 (1994) on persons with disabilities and No. 6 (1995) on the economic, social and cultural rights of older persons.

of Covenant rights.[6] Discrimination also includes incitement to discriminate and harassment.

8. In order for States parties to "guarantee" that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively:[7]

(a) **Formal discrimination**: Eliminating formal discrimination requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds; for example, laws should not deny equal social security benefits to women on the basis of their marital status;

(b) **Substantive discrimination**: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2, paragraph 2.[8] The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

9. In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities.

10. Both direct and indirect forms of differential treatment can amount to discrimination under article 2, paragraph 2, of the Covenant:

(a) **Direct discrimination** occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground (e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees). Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant);

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[6] For a similar definition see article 1, of the International Convention on the Elimination of All Forms of Racial Discrimination and of the Convention on the Elimination of All Forms of Discrimination against Women; and article 2 of the Convention on the Rights of Persons with Disabilities. The Human Rights Committee comes to a similar interpretation in its general comment No. 18, paras. 6 and 7. The Committee has adopted a similar position in previous general comments.

[7] Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3).

[8] Ibid.

(b) **Indirect discrimination** refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.

Private sphere

11. Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

Systemic discrimination

12. The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.

Permissible scope of differential treatment

13. Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects. A failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority.

14. Under international law, a failure to act in good faith to comply with the obligation in article 2, paragraph 2, to guarantee that the rights enunciated in the Covenant will be exercised without discrimination amounts to a violation. Covenant rights can be violated through the direct action or omission by States parties, including through their institutions or agencies at the national and local levels. States parties should also ensure that they refrain from discriminatory practices in international cooperation and assistance and take steps to ensure that all actors under their jurisdiction do likewise.

III. Prohibited grounds of discrimination

15. Article 2, paragraph 2, lists the prohibited grounds of discrimination as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The inclusion of "other status" indicates that this list is not exhaustive and other grounds may be incorporated in this category. The express grounds and a number of implied grounds under "other status" are discussed below. The examples of differential treatment presented in this section are merely illustrative and they are not intended to represent the full scope of possible discriminatory treatment under the relevant prohibited ground, nor a conclusive finding that such differential treatment will amount to discrimination in every situation.

Membership of a group

16. In determining whether a person is distinguished by one or more of the prohibited grounds, identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned. Membership also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability) or perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group).

Multiple discrimination[9]

17. Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.

A. Express grounds

18. The Committee has consistently raised concern over formal and substantive discrimination across a wide range of Covenant rights against indigenous peoples and ethnic minorities among others.

"Race and colour"

19. Discrimination on the basis of "race and colour", which includes an individual's ethnic origin, is prohibited by the Covenant as well as by other treaties including the International Convention on the Elimination of Racial Discrimination. The use of the term "race" in the Covenant or the present general comment does not imply the acceptance of theories which attempt to determine the existence of separate human races.[10]

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[9] See paragraph 27 below.

[10] See the Outcome Document of the Durban Review Conference (A/CONF.211/8, chap. I): "*Reaffirms* that all peoples and individuals constitute one human family, rich in diversity, and that all human beings are born free and equal in dignity and rights; and strongly rejects any doctrine of racial superiority along with theories which attempt to determine the existence of so-called distinct human races" (para. 6).

Sex

20. The Covenant guarantees the equal right of men and women to the enjoyment of economic, social and cultural rights.[11] Since the adoption of the Covenant, the notion of the prohibited ground "sex" has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination. Refusal to grant paternity leave may also amount to discrimination against men.

Language

21. Discrimination on the basis of language or regional accent is often closely linked to unequal treatment on the basis of national or ethnic origin. Language barriers can hinder the enjoyment of many Covenant rights, including the right to participate in cultural life as guaranteed by article 15 of the Covenant. Therefore, information about public services and goods, for example, should also be available, as far as possible, in languages spoken by minorities, and States parties should ensure that any language requirements relating to employment and education are based on reasonable and objective criteria.

Religion

22. This prohibited ground of discrimination covers the profession of religion or belief of one's choice (including the non-profession of any religion or belief), that may be publicly or privately manifested in worship, observance, practice and teaching.[12] For instance, discrimination arises when persons belonging to a religious minority are denied equal access to universities, employment, or health services on the basis of their religion.

Political or other opinion

23. Political and other opinions are often grounds for discriminatory treatment and include both the holding and not-holding of opinions, as well as expression of views or membership within opinion-based associations, trade unions or political parties. Access to food assistance schemes, for example, must not be made conditional on an expression of allegiance to a particular political party.

National or social origin

24. "National origin" refers to a person's State, nation, or place of origin. Due to such personal circumstances, individuals and groups of individuals may face systemic discrimination in both the public and private sphere in the exercise of their Covenant rights. "Social origin" refers to a person's inherited social status, which is

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[11] See article 3 of the Covenant and general comment No. 16 of the Committee.

[12] See also General Assembly resolution 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

discussed more fully below in the context of "property" status, descent-based discrimination under "birth" and "economic and social status".[13]

Property

25. Property status, as a prohibited ground of discrimination, is a broad concept and includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it. The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person's land tenure status, such as living in an informal settlement.[14]

Birth

26. Discrimination based on birth is prohibited and article 10, paragraph 3, of the Covenant specifically states, for example, that special measures should be taken on behalf of children and young persons "without any discrimination for reasons of parentage". Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons. The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status.[15] States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against the dissemination of ideas of superiority and inferiority on the basis of descent.

B. Other status[16]

27. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of "other status" is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. The Committee's general comments and concluding observations have recognized various other grounds and these are described in more detail below. However, this list is not intended to be exhaustive. Other possible prohibited grounds could include the denial of a person's legal capacity because he or she is in prison, or is involuntarily interned in a psychiatric institution, or the intersection of two prohibited grounds of discrimination, e.g. where access to a social service is denied on the basis of sex and disability.

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[13] See paragraphs 25, 26 and 35 below.

[14] See Committee on Economic, Social and Cultural Rights, general comments Nos. 15 and 4 respectively.

[15] For a comprehensive overview of State obligations in this regard, see Committee on the Elimination of All Forms of Racial Discrimination, general comment No. 29 (2002), art. 1, para. 1, regarding descent.

[16] See para. 15 above.

Disability

28. In its general comment No. 5, the Committee defined discrimination against persons with disabilities[17] as "any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights".[18] The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.[19] States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,[20] as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.

Age

29. Age is a prohibited ground of discrimination in several contexts. The Committee has highlighted the need to address discrimination against unemployed older persons in finding work, or accessing professional training or retraining, and against older persons living in poverty with unequal access to universal old-age pensions due to their place of residence.[21] In relation to young persons, unequal access by adolescents to sexual and reproductive health information and services amounts to discrimination.

Nationality

30. The ground of nationality should not bar access to Covenant rights,[22] e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.[23]

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[17] For a definition, see Convention on the Rights of Persons with Disabilities, art. 1: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

[18] See Committee on Economic, Social and Cultural Rights, general comment No. 5, para. 15.

[19] See Convention on the Rights of Persons with Disabilities, art. 2: "'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

[20] See Committee on Economic, Social and Cultural Rights, general comment No. 5, para. 22.

[21] See Committee on Economic, Social and Cultural Rights, general comment No. 6.

[22] This paragraph is without prejudice to the application of article 2, paragraph 3, of the Covenant, which states: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."

[23] See also Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on non-citizens.

Marital and family status

31. Marital and family status may differ between individuals because, inter alia, they are married or unmarried, married under a particular legal regime, in a de facto relationship or one not recognized by law, divorced or widowed, live in an extended family or kinship group or have differing kinds of responsibility for children and dependants or a particular number of children. Differential treatment in access to social security benefits on the basis of whether an individual is married must be justified on reasonable and objective criteria. In certain cases, discrimination can also occur when an individual is unable to exercise a right protected by the Covenant because of his or her family status or can only do so with spousal consent or a relative's concurrence or guarantee.

Sexual orientation and gender identity

32. "Other status" as recognized in article 2, paragraph 2, includes sexual orientation.[24] States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.[25]

Health status

33. Health status refers to a person's physical or mental health.[26] States parties should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.[27] States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula, which often undermines the ability of individuals to enjoy fully their Covenant rights. Denial of access to health insurance on the basis of health status will amount to discrimination if no reasonable or objective criteria can justify such differentiation.

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[24] See Committee on Economic, Social and Cultural Rights, general comments Nos. 14 and 15.

[25] For definitions, see the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (http://www.yogyakartaprinciples.org/).

[26] See Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 12 (b), 18, 28 and 29.

[27] See the guidelines published by the Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) (2006), "International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version" (available online at: http://data.unaids.org/Publications/IRC-pub07/JC1252-InternGuidelines_en.pdf).

Place of residence

34. The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence, e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health-care facilities.

Economic and social situation

35. Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.

IV. National implementation

36. In addition to refraining from discriminatory actions, States parties should take concrete, deliberate and targeted measures to ensure that discrimination in the exercise of Covenant rights is eliminated. Individuals and groups of individuals, who may be distinguished by one or more of the prohibited grounds, should be ensured the right to participate in decision-making processes over the selection of such measures. States parties should regularly assess whether the measures chosen are effective in practice.

Legislation

37. Adoption of legislation to address discrimination is indispensable in complying with article 2, paragraph 2. States parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of Covenant rights.

Policies, plans and strategies

38. States parties should ensure that strategies, policies, and plans of action are in place and implemented in order to address both formal and substantive discrimination by public and private actors in the area of Covenant rights. Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, among other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality. Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination. Public and private

institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programmes for public officials and make such training available to judges and candidates for judicial appointments. Teaching on the principles of equality and non-discrimination should be integrated in formal and non-formal inclusive and multicultural education, with a view to dismantling notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance between different groups in society. States parties should also adopt appropriate preventive measures to avoid the emergence of new marginalized groups.

Elimination of systemic discrimination

39. States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.

Remedies and accountability

40. National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone without discrimination. These institutions should adjudicate or investigate complaints promptly, impartially, and independently and address alleged violations relating to article 2, paragraph 2, including actions or omissions by private actors. Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively. These institutions should also be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies, and States parties should ensure that these measures are effectively implemented. Domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways which facilitate and promote the full protection of economic, social and cultural rights.[28]

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[28] See Committee on Economic, Social and Cultural Rights, general comments Nos. 3 and 9. See also the practice of the Committee in its concluding observations on reports of States parties to the Covenant.

Monitoring, indicators and benchmarks

41. States parties are obliged to monitor effectively the implementation of measures to comply with article 2, paragraph 2, of the Covenant. Monitoring should assess both the steps taken and the results achieved in the elimination of discrimination. National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.[29]

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[29] See Committee on Economic, Social and Cultural Rights, general comments Nos. 13, 14, 15, 17 and 19, and its new reporting guidelines (E/C.12/2008/2).

Annex VII

General comment No. 21
Right of everyone to take part in cultural life (article 15, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction and basic premises

1. Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.

2. The right of everyone to take part in cultural life is closely related to the other cultural rights contained in article 15: the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)); the right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author (art. 15, para. 1 (c)); and the right to freedom indispensable for scientific research and creative activity (art. 15, para. 3). The right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values. The right to take part in cultural life is also interdependent on other rights enshrined in the Covenant, including the right of all peoples to self-determination (art. 1) and the right to an adequate standard of living (art. 11).

3. The right of everyone to take part in cultural life is also recognized in article 27, paragraph 1, of the Universal Declaration of Human Rights, which states that "everyone has the right freely to participate in the cultural life of the community". Other international instruments refer to the right to equal participation in cultural activities;[1] the right to participate in all aspects of social and cultural life;[2] the right to participate fully in cultural and artistic life;[3] the right of access to and participation in cultural life;[4] and the right to take part on an equal basis with others in cultural life.[5] Instruments on civil and political rights,[6] on the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public,[7] and to participate

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[1] International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (vi).

[2] Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (c).

[3] Convention on the Rights of the Child, art. 31, para. 2.

[4] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43, para. 1 (g).

[5] Convention on the Rights of Persons with Disabilities, art. 30, para. 1.

[6] In particular the International Covenant on Civil and Political Rights, arts. 17, 18, 19, 21 and 22.

[7] International Covenant on Civil and Political Rights, art. 27.

effectively in cultural life,[8] on the rights of indigenous peoples to their cultural institutions, ancestral lands, natural resources and traditional knowledge,[9] and on the right to development[10] also contain important provisions on this subject.

4. In the present general comment, the Committee addresses specifically the right of everyone under article 15, paragraph 1 (a), to take part in cultural life, in conjunction with paragraphs 2, 3 and 4, as they relate to culture, creative activity and the development of international contacts and cooperation in cultural fields, respectively. The right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author, as provided for in article 15, paragraph 1 (c), was the subject of general comment No. 17 (2005).

5. The Committee has gained long experience on this subject through its consideration of reports and dialogue with States parties. In addition, it has twice organized a day of general discussion, once in 1992 and again in 2008, with representatives of international organizations and civil society with a view to preparing the present general comment.

II. Normative content of article 15, paragraph 1 (a)

6. The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).

7. The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. This is especially important for all indigenous peoples, who have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples.

A. Components of article 15, paragraph 1 (a)

8. The content or scope of the terms used in article 15, paragraph 1 (a), on the right of everyone to take part in cultural life, is to be understood as set out below:

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[8] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2, paras. 1 and 2. See also Framework Convention for the Protection of National Minorities (Council of Europe, ETS No. 157), art. 15.

[9] United Nations Declaration on the Rights of Indigenous Peoples, in particular arts. 5, 8, and 10-13 ff. See also ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, in particular arts. 2, 5, 7, 8, and 13-15 ff.

[10] Declaration on the Right to Development (General Assembly resolution 41/128), art. 1. In its general comment No. 4, paragraph 9, the Committee considers that rights cannot be viewed in isolation from other human rights contained in the two international Covenants and other applicable international instruments.

"Everyone"

9. In its general comment No. 17 on the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which one is the author,[11] the Committee recognizes that the term "everyone" in the first line of article 15 may denote the individual or the collective; in other words, cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.

"Cultural life"

10. Various definitions of "culture" have been postulated in the past and others may arise in the future. All of them, however, refer to the multifaceted content implicit in the concept of culture.[12]

11. In the Committee's view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression "cultural life" is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.

12. The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society.

13. The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world

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[11] See definition of "author" in general comment No. 17 (2005), paras. 7 and 8.

[12] Culture is (a) "the set of distinctive spiritual, material, intellectual and emotional features of a society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs" (UNESCO Universal Declaration on Cultural Diversity, fifth preambular paragraph); (b) "in its very essence, a social phenomenon resulting from individuals joining and cooperating in creative activities [and] is not limited to access to works of art and the human rights, but is at one and the same time the acquisition of knowledge, the demand for a way of life and need to communicate" (UNESCO recommendation on participation by the people at large in cultural life and their contribution to it, 1976, the Nairobi recommendation, fifth preambular paragraph (a) and (c)); (c) "covers those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and meanings that they give to their existence and to their development" (Fribourg Declaration on Cultural Rights, art. 2 (a) (definitions)); (d) "the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups [and] a system of values and symbols as well as a set of practices that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationships in everyday life" (Rodolfo Stavenhagen, "Cultural Rights: A social science perspective", in H. Niec (ed.), *Cultural Rights and Wrongs: A collection of essays in commemoration of the 50th anniversary of the Universal Declaration of Human Rights*, Paris and Leicester, UNESCO Publishing and Institute of Art and Law).

view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.

"To participate" or "to take part"

14. The terms "to participate" and "to take part" have the same meaning and are used interchangeably in other international and regional instruments.

15. There are, among others, three interrelated main components of the right to participate or take part in cultural life: (a) participation in, (b) access to, and (c) contribution to cultural life:

(a) *Participation* covers in particular the right of everyone — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice. Everyone also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity;

(b) *Access* covers in particular the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water,[13] biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities;

(c) *Contribution to cultural life* refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.[14]

B. Elements of the right to take part in cultural life

16. The following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination:

(a) *Availability* is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory;

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[13] General comment No. 15 (2002), paras. 6 and 11.

[14] UNESCO Universal Declaration on Cultural Diversity, art. 5. See also Fribourg Declaration on Cultural Rights, art. 7.

(b) *Accessibility* consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination.[15] It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person's choice, and the access of communities to means of expressions and dissemination.

(c) *Acceptability* entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;

(d) *Adaptability* refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities;

(e) *Appropriateness* refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.[16] The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed.

C. Limitations to the right to take part in cultural life

17. The right of everyone to take part in cultural life is closely linked to the enjoyment of other rights recognized in the international human rights instruments. Consequently, States parties have a duty to implement their obligations under article 15, paragraph 1 (a), together with their obligations under other provisions of the Covenant and international instruments, in order to promote and protect the entire range of human rights guaranteed under international law.

18. The Committee wishes to recall that, while account must be taken of national and regional particularities and various historical, cultural and religious

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[15] See general comment No. 20 (2009).

[16] Fribourg Declaration on Cultural Rights, art. 1 (e).

backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms.[17] Thus, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.[18]

19. Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed to customs and traditions, that infringe upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also wishes to stress the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association.

20. Article 15, paragraph 1 (a) may not be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for therein.[19]

D. Special topics of broad application

Non-discrimination and equal treatment

21. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[20]

22. In particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services.

23. The Committee emphasizes that the elimination of all forms of discrimination in order to guarantee the exercise of the right of everyone to take part in cultural life can, in many cases, be achieved with limited resources[21] by the adoption, amendment or repeal of legislation, or through publicity and information. In particular, a first and important step towards the elimination of discrimination, whether direct or indirect, is for States to recognize the existence of diverse cultural identities of individuals and communities on their territories. The Committee also refers States parties to its general comment No. 3 (1990), paragraph 12, on the

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[17] Vienna Declaration and Programme of Action, para. 5.

[18] Universal Declaration on Cultural Diversity, art. 4.

[19] International Covenant on Economic, Social and Cultural Rights, art. 5, para. 1.

[20] See general comment No. 20 (2009).

[21] See general comment No. 3 (1990); statement by the Committee: an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

nature of States parties' obligations, which establishes that, even in times of severe resource constraints, the most disadvantaged and marginalized individuals and groups can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

24. The adoption of temporary special measures with the sole purpose of achieving de facto equality does not constitute discrimination, provided that such measures do not perpetuate unequal protection or form a separate system of protection for certain individuals or groups of individuals, and that they are discontinued when the objectives for which they were taken have been achieved.

E. Persons and communities requiring special protection

1. Women

25. Ensuring the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.[22] Implementing article 3 of the Covenant, in relation to article 15, paragraph 1 (a), requires, inter alia, the elimination of institutional and legal obstacles as well as those based on negative practices, including those attributed to customs and traditions, that prevent women from participating fully in cultural life, science education and scientific research.[23]

2. Children

26. Children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children's full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians. In particular, when taking into consideration their obligations under the Covenant and other human rights instruments on the right to education, including with regard to the aims of education,[24] States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth.[25] Thus, education must be culturally appropriate, include human rights education, enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies.

27. The Committee wishes to recall in this regard that educational programmes of States parties should respect the cultural specificities of national or ethnic, linguistic and religious minorities as well as indigenous peoples, and incorporate in those programmes their history, knowledge and technologies, as well as their social, economic and cultural values and aspirations. Such programmes should be included in school curricula for all, not only for minorities and indigenous peoples. States parties should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups are conducted on or in their own language, taking into consideration the wishes expressed by communities and in the

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[22] General comment No. 16 (2005), para. 16.

[23] Ibid., para. 31.

[24] In particular articles 28 and 29 of the Convention on the Rights of the Child.

[25] World Declaration on Education for All: Meeting Basic Learning Needs, art. 1-3.

international human rights standards in this area.[26] Educational programmes should also transmit the necessary knowledge to enable everyone to participate fully and on an equal footing in their own and in national communities.

3. *Older persons*

28. The Committee is of the view that States parties to the Covenant are obligated to pay particular attention to the promotion and protection of the cultural rights of older persons. The Committee emphasizes the important role that older persons continue to play in most societies by reason of their creative, artistic and intellectual abilities, and as the transmitters of information, knowledge, traditions and cultural values. Consequently, the Committee attaches particular importance to the message contained in recommendations 44 and 48 of the Vienna International Plan of Action on Aging, calling for the development of programmes featuring older persons as teachers and transmitters of knowledge, culture and spiritual values, and encouraging Governments and international organizations to support programmes aimed at providing older persons with easier physical access to cultural institutions (such as museums, theatres, concert halls and cinemas).[27]

29. The Committee therefore urges States parties to take account of the recommendations contained in the United Nations Principles for Older Persons, and in particular of principle 7, that older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations; and principle 16, that older persons should have access to the educational, cultural, spiritual and recreational resources of society.[28]

4. *Persons with disabilities*

30. Paragraph 17 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas, and that States should promote accessibility to and availability of places for cultural performances and services.[29]

31. In order to facilitate participation of persons with disabilities in cultural life, States parties should, inter alia, recognize the right of these persons to have access to cultural material, television programmes, films, theatre and other cultural activities, in accessible forms; to have access to places where cultural performances or services are offered, such as theatres, museums, cinemas, libraries and tourist services and, to the extent possible, to monuments and places of national cultural importance; to the recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf; and to the encouragement and

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[26] In particular the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

[27] General comment No. 6 (1995), paras. 38 and 40.

[28] General comment No. 6 (1995), para. 39.

[29] General Assembly resolution 48/96, annex.

promotion of their participation, to the extent possible, in recreational, leisure and sporting activities.[30]

5. *Minorities*

32. In the Committee's view, article 15, paragraph 1 (a), of the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture.[31] This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership.

33. Minorities, as well as persons belonging to minorities, have the right not only to their own identity but also to development in all areas of cultural life. Any programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should thus be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures.

6. *Migrants*

34. States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events. States parties should not prevent migrants from maintaining their cultural links with their countries of origin.[32]

35. As education is intrinsically related to culture, the Committee recommends that States parties adopt appropriate measures to enable the children of migrants to attend, on a basis of equal treatment, State-run educational institutions and programmes.

7. *Indigenous peoples*

36. States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples.[33] The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.[34] Indigenous

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[30] Convention on the Rights of Persons with Disabilities, art. 30.

[31] International Covenant on Civil and Political Rights, art. 27; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, para. 1 (1).

[32] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31.

[33] See Declaration on the Rights of Indigenous Peoples, art. 1. See also ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169), art. 1, para. 2.

[34] United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (a).

peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.[35] States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.

37. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts.[36] States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.[37]

8. *Persons living in poverty*

38. The Committee considers that every person or group of persons is endowed with a cultural richness inherent in their humanity and therefore can make, and continues to make, a significant contribution to the development of culture. Nevertheless, it must be borne in mind that, in practice, poverty seriously restricts the ability of a person or a group of persons to exercise the right to take part in, gain access and contribute to, on equal terms, all spheres of cultural life, and more importantly, seriously affects their hopes for the future and their ability to enjoy effectively their own culture. The common underlying theme in the experience of persons living in poverty is a sense of powerlessness that is often a consequence of their situation. Awareness of their human rights, and particularly the right of every person to take part in cultural life, can significantly empower persons or groups of persons living in poverty.[38]

39. Culture as a social product must be brought within the reach of all, on the basis of equality, non-discrimination and participation. Therefore, in implementing the legal obligations enshrined in article 15, paragraph 1 (a), of the Covenant, States parties must adopt, without delay, concrete measures to ensure adequate protection and the full exercise of the right of persons living in poverty and their communities to enjoy and take part in cultural life. In this respect, the Committee refers States parties to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights.[39]

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[35] Convention No. 169, arts. 13-16. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 20 and 33.

[36] ILO Convention No. 169, arts. 5 and 31. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 11-13.

[37] ILO Convention No. 169, art. 6 (a). See also the United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

[38] See E/C.12/2001/10, para. 5.

[39] Ibid., para. 14.

F. Cultural diversity and the right to take part in cultural life

40. The protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life.[40]

41. Cultures have no fixed borders. The phenomena of migration, integration, assimilation and globalization have brought cultures, groups and individuals into closer contact than ever before, at a time when each of them is striving to keep their own identity.

42. Given that globalization has positive and negative effects, States parties must take appropriate steps to avoid its adverse consequences on the right to take part in cultural life, particularly for the most disadvantaged and marginalized individuals and groups, such as persons living in poverty. Far from having produced a single world culture, globalization has demonstrated that the concept of culture implies the coexistence of different cultures.

43. States parties should also bear in mind that cultural activities, goods and services have economic and cultural dimensions, conveying identity, values and meanings. They must not be treated as having solely a commercial value.[41] In particular, bearing in mind article 15 (2) of the Covenant, States parties should adopt measures to protect and promote the diversity of cultural expressions,[42] and enable all cultures to express themselves and make themselves known.[43] In this respect, due regard should be paid to human rights standards, including the right to information and expression, and to the need to protect the free flow of ideas by word and image. The measures may also aim at preventing the signs, symbols and expressions of a particular culture from being taken out of context for the sole purpose of marketing or exploitation by the mass media.

III. States parties' obligations

A. General legal obligations

44. The Covenant imposes on States parties the immediate obligation to guarantee that the right set out in article 15, paragraph 1 (a), is exercised without discrimination, to recognize cultural practices and to refrain from interfering in their enjoyment and development.[44]

45. While the Covenant provides for the "progressive" realization of the rights set out in its provisions and recognizes the problems arising from limited resources, it imposes on States parties the specific and continuing obligation to take deliberate

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[40] See the Universal Declaration on Cultural Diversity, arts. 4 and 5.

[41] UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble, para. 18. See also the Universal Declaration on Cultural Diversity, art. 8.

[42] UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. IV-5.

[43] See the Universal Declaration on Cultural Diversity, art. 6.

[44] See general comment No. 20 (2009).

and concrete measures aimed at the full implementation of the right of everyone to take part in cultural life.[45]

46. As in the case of the other rights set out in the Covenant, regressive measures taken in relation to the right of everyone to take part in cultural life are not permitted. Consequently, if any such measure is taken deliberately, the State party has to prove that it was taken after careful consideration of all alternatives and that the measure in question is justified, bearing in mind the complete set of rights recognized in the Covenant.[46]

47. Given the interrelationship between the rights set out in article 15 of the Covenant (see paragraph 2 above), the full realization of the right of everyone to take part in cultural life also requires the adoption of steps necessary for the conservation, development and dissemination of science and culture, as well as steps to ensure respect for the freedom indispensable to scientific research and creative activity, in accordance with paragraphs 2 and 3, respectively, of article 15.[47]

B. Specific legal obligations

48. The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. Lastly, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.[48]

49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group:

(a) To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected;

This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation,[49] and the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States parties should consequently ensure that their legislation does not impair the enjoyment of these rights through direct or indirect discrimination.

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[45] See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 44, No. 14 (2000), para. 31, No. 17 (2005), para. 26 and No. 18 (2005), para. 20. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 21.

[46] See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 45, No. 14 (2000), para. 32, No. 17 (2005), para. 27 and No. 18 (2005), para. 21.

[47] See general comments No. 13 (1999), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22.

[48] See general comments No. 13 (1990), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 6.

[49] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31

(b) To enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind;

This implies the right of all persons to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services, understood as vectors of identity, values and meaning.[50]

(c) To enjoy the freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression, if any;

This obligation is closely related to the duty of States parties, under article 15, paragraph 3, "to respect the freedom indispensable for scientific research and creative activity".

(d) To have access to their own cultural and linguistic heritage and to that of others;

In particular, States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. This includes the right to be taught about one's own culture as well as those of others.[51] States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life.

(e) To take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life and on his or her rights under article 15, paragraph 1 (a).

50. In many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected. Consequently, the obligation to protect is to be understood as requiring States to take measures to prevent third parties from interfering in the exercise of rights listed in paragraph 49 above. In addition, States parties are obliged to:

(a) Respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters;

Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.[52]

(b) Respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes;

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[50] Universal Declaration on Cultural Diversity, para. 8.

[51] Fribourg Declaration on Cultural Rights, arts. 6 (b) and 7 (b).

[52] Universal Declaration on Cultural Diversity, art. 7.

Particular attention should be paid to the adverse consequences of globalization, undue privatization of goods and services, and deregulation on the right to participate in cultural life.

(c) Respect and protect the cultural productions of indigenous peoples, including their traditional knowledge, natural medicines, folklore, rituals and other forms of expression;

This includes protection from illegal or unjust exploitation of their lands, territories and resources by State entities or private or transnational enterprises and corporations.

(d) Promulgate and enforce legislation to prohibit discrimination based on cultural identity, as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, taking into consideration articles 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

51. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

52. States parties are under an obligation to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures, that would contribute to the realization of this right, such as:

(a) Adopting policies for the protection and promotion of cultural diversity, and facilitating access to a rich and diversified range of cultural expressions, including through, inter alia, measures aimed at establishing and supporting public institutions and the cultural infrastructure necessary for the implementation of such policies; and measures aimed at enhancing diversity through public broadcasting in regional and minority languages;

(b) Adopting policies enabling persons belonging to diverse cultural communities to engage freely and without discrimination in their own cultural practices and those of others, and to choose freely their way of life;

(c) Promoting the exercise of the right of association for cultural and linguistic minorities for the development of their cultural and linguistic rights;

(d) Granting assistance, financial or other, to artists, public and private organizations, including science academies, cultural associations, trade unions and other individuals and institutions engaged in scientific and creative activities;

(e) Encouraging scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops;

(f) Taking appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture;

(g) Taking appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life;

(h) Taking appropriate measures to create conditions conducive to a constructive intercultural relationship between individuals and groups based on mutual respect, understanding and tolerance;

(i) Taking appropriate measures to conduct public campaigns through the media, educational institutions and other available channels, with a view to eliminating any form of prejudice against individuals or communities, based on their cultural identity.

53. The obligation to promote requires States parties to take effective steps to ensure that there is appropriate education and public awareness concerning the right to take part in cultural life, particularly in rural and deprived urban areas, or in relation to the specific situation of, inter alia, minorities and indigenous peoples. This includes education and awareness-raising on the need to respect cultural heritage and cultural diversity.

54. The obligation to fulfil requires that States parties must provide all that is necessary for fulfilment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal. This level of obligation includes, for example:

(a) The enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated;

(b) Programmes aimed at preserving and restoring cultural heritage;

(c) The inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned;

(d) Guaranteed access for all, without discrimination on grounds of financial or any other status, to museums, libraries, cinemas and theatres and to cultural activities, services and events.

C. Core obligations

55. In its general comment No. 3 (1990), the Committee stressed that States parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set out in the Covenant. Thus, in accordance with the Covenant and other international instruments dealing with human rights and the protection of cultural diversity, the Committee considers that article 15, paragraph 1 (a), of the Covenant entails at least the obligation to create and promote an environment within which a person individually, or in association with others, or within a community or group, can participate in the culture of their choice, which includes the following core obligations applicable with immediate effect:

(a) To take legislative and any other necessary steps to guarantee non-iscrimination and gender equality in the enjoyment of the right of everyone to take part in cultural life;

(b) To respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice;

(c) To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting freedom of thought, belief and religion; freedom of opinion and expression; a person's right to use the language of his or her choice; freedom of association and peaceful assembly; and freedom to choose and set up educational establishments;

(d) To eliminate any barriers or obstacles that inhibit or restrict a person's access to the person's own culture or to other cultures, without discrimination and without consideration for frontiers of any kind;

(e) To allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.

D. International obligations

56. In its general comment No. 3 (1990), the Committee draws attention to the obligation of States parties to take steps, individually and through international assistance and cooperation, especially through economic and technical cooperation, with a view to achieving the full realization of the rights recognized in the Covenant. In the spirit of Article 56 of the Charter of the United Nations, as well as specific provisions of the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 1, and arts. 15 and 23), States parties should recognize and promote the essential role of international cooperation in the achievement of the rights recognized in the Covenant, including the right of everyone to take part in cultural life, and should fulfil their commitment to take joint and separate action to that effect.

57. States parties should, through international agreements where appropriate, ensure that the realization of the right of everyone to take part in cultural life receives due attention.[53]

58. The Committee recalls that international cooperation for development and thus for the realization of economic, social and cultural rights, including the right to take part in cultural life, is an obligation of States parties, especially of those States that are in a position to provide assistance. This obligation is in accordance with Articles 55 and 56 of the Charter of the United Nations, as well as articles 2, paragraph 1, and articles 15 and 23 of the Covenant.[54]

59. In negotiations with international financial institutions and in concluding bilateral agreements, States parties should ensure that the enjoyment of the right enshrined in article 15, paragraph 1 (a), of the Covenant is not impaired. For example, the strategies, programmes and policies adopted by States parties under structural adjustment programmes should not interfere with their core obligations in

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[53] See general comment No. 18 (2005), para. 29.

[54] General comment No. 3 (1990), para. 14. See also general comment No. 18 (2005), para. 37.

relation to the right of everyone, especially the most disadvantaged and marginalized individuals and groups, to take part in cultural life.[55]

IV. Violations

60. To demonstrate compliance with their general and specific obligations, States parties must show that they have taken appropriate measures to ensure the respect for and protection of cultural freedoms, as well as the necessary steps towards the full realization of the right to take part in cultural life within their maximum available resources. States parties must also show that they have guaranteed that the right is enjoyed equally and without discrimination, by men and women.

61. In assessing whether States parties have complied with obligations to take action, the Committee looks at whether implementation is reasonable or proportionate with respect to the attainment of the relevant rights, complies with human rights and democratic principles, and whether it is subject to an adequate framework of monitoring and accountability.

62. Violations can occur through the direct action of a State party or of other entities or institutions that are insufficiently regulated by the State party, including, in particular, those in the private sector. Many violations of the right to take part in cultural life occur when States parties prevent access to cultural life, practices, goods and services by individuals or communities.

63. Violations of article 15, paragraph 1 (a), also occur through the omission or failure of a State party to take the necessary measures to comply with its legal obligations under this provision. Violations through omission include the failure to take appropriate steps to achieve the full realization of the right of everyone to take part in cultural life, and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies to enable people to exercise in full the right to take part in cultural life.

64. A violation also occurs when a State party fails to take steps to combat practices harmful to the well-being of a person or group of persons. These harmful practices, including those attributed to customs and traditions, such as female genital mutilation and allegations of the practice of witchcraft, are barriers to the full exercise by the affected persons of the right enshrined in article 15, paragraph 1 (a).

65. Any deliberately retrogressive measures in relation to the right to take part in cultural life would require the most careful consideration and need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

V. Implementation at the national level

A. Legislation, strategies and policies

66. While States parties have a wide margin of discretion in selecting the steps they consider most appropriate for the full realization of the right, they must immediately

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[55] See general comment No. 18 (2005), para. 30.

take those steps intended to guarantee access by everyone, without discrimination, to cultural life.

67. States parties must take the necessary steps without delay to guarantee immediately at least the minimum content of the core obligations (see paragraph 56 above). Many of these steps, such as those intended to guarantee non-discrimination de jure, do not necessarily require financial resources. While there may be other steps that require resources, these steps are nevertheless essential to ensure the implementation of that minimum content. Such steps are not static, and States parties are obliged to advance progressively towards the full realization of the rights recognized in the Covenant and, as far as the present general comment is concerned, of the right enshrined in article 15, paragraph 1 (a).

68. The Committee encourages States parties to make the greatest possible use of the valuable cultural resources that every society possesses and to bring them within the reach of everyone, paying particular attention to the most disadvantaged and marginalized individuals and groups, in order to ensure that everyone has effective access to cultural life.

69. The Committee emphasizes that inclusive cultural empowerment derived from the right of everyone to take part in cultural life is a tool for reducing the disparities so that everyone can enjoy, on an equal footing, the values of his or her own culture within a democratic society.

70. States parties, in implementing the right enshrined in article 15, paragraph 1 (a), of the Covenant, should go beyond the material aspects of culture (such as museums, libraries, theatres, cinemas, monuments and heritage sites) and adopt policies, programmes and proactive measures that also promote effective access by all to intangible cultural goods (such as language, knowledge and traditions).

B. Indicators and benchmarks

71. In their national strategies and policies, States parties should identify appropriate indicators and benchmarks, including disaggregated statistics and time frames that allow them to monitor effectively the implementation of the right of everyone to take part in cultural life, and also to assess progress towards the full realization of this right.

C. Remedies and accountability

72. The strategies and policies adopted by States parties should provide for the establishment of effective mechanisms and institutions, where these do not exist, to investigate and examine alleged infringements of article 15, paragraph 1 (a), identify responsibilities, publicize the results and offer the necessary administrative, judicial or other remedies to compensate victims.

VI. Obligations of actors other than States

73. While compliance with the Covenant is mainly the responsibility of States parties, all members of civil society — individuals, groups, communities, minorities, indigenous peoples, religious bodies, private organizations, business and civil society in general — also have responsibilities in relation to the effective implementation of the right of everyone to take part in cultural life. States parties should regulate the

responsibility incumbent upon the corporate sector and other non-State actors with regard to the respect for this right.

74. Communities and cultural associations play a fundamental role in the promotion of the right of everyone to take part in cultural life at the local and national levels, and in cooperating with States parties in the implementation of their obligations under article 15, paragraph 1 (a).

75. The Committee notes that, as members of international organizations such as United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the World Trade Organization (WTO), States parties have an obligation to adopt whatever measures they can to ensure that the policies and decisions of those organizations in the field of culture and related areas are in conformity with their obligations under the Covenant, in particular the obligations contained in articles 15 and 2, paragraph 1, and articles 22 and 23, concerning international assistance and cooperation.

76. United Nations organs and specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, adopt international measures likely to contribute to the progressive implementation of article 15, paragraph 1 (a). In particular, UNESCO, WIPO, ILO, FAO, WHO and other relevant agencies, funds and programmes of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the right of everyone to take part in cultural life, in cooperation with the Office of the United Nations High Commissioner for Human Rights.

Annex VIII

Report of the tenth meeting of the Joint Expert Group UNESCO (Committee on Conventions and Recommendations)/ECOSOC (Committee on Economic, Social and Cultural Rights) on Monitoring the Right to Education

Mother tongue, multilingualism and the right to education

1. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education held its tenth meeting at UNESCO HQ on 8 May 2009.[1] Ms Virginia B. Dandan and Mr. Eibe Riedel, Members of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), and of the Joint Expert Group, and Professor Brian FIGAJI, member of UNESCO's Committee on Conventions and Recommendations (CR) and of the Joint Expert Group, participated in the meeting. Ambassador Ortigao, former Permanent Delegate of Portugal to UNESCO and member of the Joint Expert Group could not attend the meeting.[2]

2. The members of the Joint Expert Group considered that the complementarities as well as divergences in working methods of CESCR and the CR should be borne in mind systematically. With regard to the monitoring mandate, there are substantial differences between the CR and CESCR. The CESCR is composed of independent experts, whereas the CR is composed of representatives of member States on UNESCO's Executive Board. The CESCR considers individual State reports through a constructive dialogue with the State party to the International Covenant, whereas the CR examines a summary report (in case of conventions) and a consolidated report (in case of recommendations), prepared by the Secretariat. After examining the reports, the CESCR adopts, in a closed session, concluding observations containing recommendations for follow-up action by the State party, whereas the CR recommends to the Executive Board a draft decision for consideration and adoption. Unlike the CR, CESCR can take up to nine hours to examine a State report in a public session and analyses the substance, whereas the CR only examines a summary of reports mentioned above. CESCR draws upon the information supplied by United Nations specialized agencies, other United Nations programmes, and NGOs with respect to an individual State report, whereas information from NGOs is solicited by UNESCO through the national commissions and NGOs do not participate in the work of the CR.

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[1] In line with paragraph of 181 EX/Decision 24, in which the Executive Board requests the Joint Expert Group "to submit in its forthcoming reports a more comprehensive picture of the debates that took place within the Joint Expert Group", this document reports comprehensively on the discussions by the Joint Expert Group at its tenth meeting.

[2] The tenth meeting was attended by Mrs Linda King, Director a.i. Division of Basic Education, UNESCO, Ms. Rolla Moumne, Mrs. Noro Andriamiseza, Ms. Delphine Dorsi, and Mr. Kishore Singh (secretary of the Joint Expert Group), Division of Basic Education, UNESCO, and Ms. Carolin Schleker, from the Office of the High Commissioner for Human Rights (OHCHR). Representatives from the Permanent Delegations of Portugal, the Republic of Korea, Madagascar, and Hungary to UNESCO also attended the meeting as observers.

3. Mr. Riedel, who chaired the meeting, welcomed the participants and underlined the importance of the Joint Expert Group as a unique institutionalized mechanism with regard to UNESCO's collaboration with the United Nations human rights treaty bodies in analysing issues involving monitoring. This imparts synergies to the CR and CESCR to learn from each other's experiences in monitoring the implementation of the right to education.

4. Mrs. Linda King, Director a.i. Division of Basic Education of UNESCO, in introductory remarks mentioned that language in education is gaining more and more importance. The meeting addresses a crucial issue: the legal framework. But language in education also refers to technical, political and emotional aspects. The most difficult aspects are political and technical ones, especially the issue of learning material. The language issue is closely linked to the Education For All movement (EFA).

5. The tenth meeting of the Joint Expert Group addressed the theme: "*Multilingualism, mother tongue and the right to education*". The question of languages has been addressed within UNESCO in several instances, including in a thematic debate at the Executive Board, and the Joint Expert Group considered it appropriate to focus on the *Legal Framework* of language in education and the right to education. Increasing consideration is being given to languages as a vehicle of transmitting culture and to the need for respect of the richness of linguistic and cultural diversity and multilingual education in today's globalized world. Language as a medium of instruction — imparting education in mother tongue, in official or national language(s), and multilingual education — have become a subject of critical reflection. The Joint Expert Group recognized that when reflecting on these questions in relation to the right to education, the "legal framework" — at the international as well as the national level — is of crucial importance, especially as the legal framework has not yet been examined holistically and adequately. In view of this fact, the Secretariat prepared a set of documents for the meeting in consultation with the members of the Joint Expert Group.

International legal instruments

6. After adopting the agenda for the meeting, the Joint Expert Group reviewed the international legal instruments — the International Covenant on Economic, Social and Cultural Rights, and other relevant conventions and recommendations that contain legally binding and legally non-binding political norms, respectively. The latter are no less important in monitoring the right to education and State responsibility due to their moral force. Some international instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)[3] or the Convention on the Rights of the Child (1989)[4] contain provisions for providing education in the language of the child, and the Recommendation on Development of Adult Education also contains provisions of education in mother tongue. Protecting the rights of indigenous people in education is important to maintain their cultural identity, and special attention

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[3] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

[4] Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

should be paid to the United Nations Declaration on the Rights of Indigenous Peoples (2007). It is important to dispose of a good understanding of the nature and scope of this right, and the existing instruments and mechanisms for its protection.

7. It was emphasized that the principle of non-discrimination, enshrined in the UNESCO Convention against Discrimination in Education and the International Covenant on Economic, Social and Cultural Rights, is a key to address language issues in education from a legal perspective; it is a legal obligation of Member States to respect the principle of equality of opportunities, and not to discriminate on the basis of language in the public education system.[5]

8. The Joint Expert Group emphasized the significance of a broad understanding of the "legal framework". The key issues are to advance the legal framework, and to address States with the emphasis on their legal obligations. Such a framework should also be the basis for the formulation of strategies, policies and programmes. With regard to the operationalization of the legal framework and international normative instruments, it was pointed out that the States parties' reports submitted to the CR and to CESCR are not sufficiently critical concerning the right to education and languages. Given the importance of language and education in mother tongue and multilingual education, both bodies should be utilized more effectively. Questions relating to educational outcomes bearing in mind education in mother tongue are also important. Mrs. Linda King, Director a.i. Division of Basic Education, UNESCO and Mr. Kishore Singh, Secretary of the Joint Expert Group, from the same Division, provided information and furnished explanations during the discussion.

9. As a result of discussions on the international legal framework mentioned above, the Joint Expert Group suggested to disseminate widely the document on the international legal framework among Member States of UNESCO, as well as CESCR and other United Nations human rights treaty bodies, Special Rapporteurs, and relevant United Nations specialized agencies, national commissions of UNESCO, National Human Rights Institutions (NHRI) as well as civil society organizations (in particular the national federation of UNESCO clubs and associations).

10. During the discussions, the members of the Joint Expert Group took note of the preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages, including a study of the outcomes of the programmes implemented by UNESCO relating to this issue (document 181 EX/14), and the draft decision therein inviting the Director-General to continue monitoring the impact on the protection of languages of existing standard-setting instruments. As such, this item would be included in the provisional agenda of the 35th session of the General Conference under the heading "Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages, including a study of the outcomes of the programmes implemented by UNESCO relating to this issue."

11. In this respect, it was suggested to prepare a document clarifying all relevant instruments of the United Nations and of UNESCO with a view to reviewing and

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[5] General comment No. 20 on non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), paragraph 21 (see annex VI of the present report).

summarizing existing standard-setting documents, and thereby to enable an assessment of whether an additional instrument is needed. The members of the Joint Expert Group considered it appropriate to explore the possibility of bringing to the attention of the 35th session of the General Conference the key documents which the Joint Expert Group discussed, notably (i) country studies; and (ii) case law, for information only.

12. With regard to the implementation of the legal framework, the members of the Joint Expert Group discussed the concluding observations adopted by CESCR[6] and also the extracts relating to language in the analytical report presented to the Executive Board at its 177th session in October 2007 for the seventh consultation of member States on the measures taken for the implementation of the Convention and the Recommendation against Discrimination in Education. They reviewed the relevant extracts of the reports submitted to UNESCO by member States for this consultation in which information provided on educational rights of minorities essentially focus on language as medium of instruction.

13. The Joint Expert Group discussed how language issues *and* the right to education can be improved in concluding observations adopted by the United Nations human rights treaty bodies — notably CESCR — and how issues of multilingualism can be brought into the reporting procedure. They recognized that this is a complex issue and a difficult task to achieve.

14. The members of the Joint Expert Group discussed cultural, ethnic and linguistic minorities as beneficiaries of the right to education as recognized categories in international human rights law.[7] They recalled the importance of ensuring that the rights of minorities to education are given effect in a way that promotes, at the same time, integration and social cohesion in the context of EFA.[8] The members of the Joint Expert Group discussed the concept of "minority rights" in relation to the right to education and suggested that experts could be consulted to obtain a clear and precise definition.

15. The members of the Joint Expert Group recognized the need for a broader perception of the right to education of *minority groups* as well as of socially, economically and/or culturally disadvantaged and marginalized individuals and

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[6] Although the article 13 (right to education) of the International Covenant does not cover the rights of minorities, the questions related to imparting education in mother tongue and languages and the right to education are covered in the concluding observations, adopted by the Committee.

[7] The normative bases of the right to education of cultural, ethnic and linguistic minorities are laid down in the *Convention against Discrimination in Education*. Article 5 (1 (c)) of the Convention provides that minorities have the right to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language; the exercise of this right by the members of minorities should be respectful of *the culture and language of the community as a whole* and should not be prejudicial to national sovereignty.

[8] In this connection, the recommendations of Forum on Minority Issues were recalled to the effect that "A minority community should not be denied the right to education because of being a minority as regards access to a nation's public education establishments. The minorities have the duty to respect culture and language of the country as a whole while having the right to establish and manage their own educational institutions." See the report of the independent expert on minority issues, Recommendations of Forum on Minority Issues: the right to education (A/HRC/10/11/Add.1 (para. 9)).

groups. They acknowledged the necessity to explore the issue of languages of instruction and right to education in a way which facilitates the process of universalizing this right, and to make sure that no individual is disadvantaged on account of language or is a victim of discrimination or exclusion. Among categories of disadvantaged and marginalized individuals and groups, indigenous peoples with their own culture and language have a special place. Moreover, as an example, the Saami receive education both in the official language in public schools, and in the Saami language through traditional education.

16. The Joint Expert Group also considered the Recommendations of the United Nations Forum on Minority Issues: the right to education (December 2008), notably the recommendation to the effect that "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. These measures are most critical in preschool and primary schools, but may extend to subsequent stages of education. School curricula must encourage knowledge among all students of the history, traditions, language and culture of the minorities existing within their territory and also provide minorities with adequate opportunities to gain knowledge of the society as a whole."[9] They also highlighted the recommendation that "School language regimes for the initial stages of education in State schools should ideally employ the language of the child as the predominant medium of instruction, with a gradual introduction of the State language or dominant local language, if different from that of the child, at a later stage, where possible by bilingual teachers sensitive to the cultural backgrounds of minority children."[10]

17. A key issue identified by the Joint Expert Group was how to develop learning material and make it available free of any charge for primary education for various categories of disadvantaged and marginalized individuals and groups — not only to minorities, but also to indigenous people, nomads, refugees, migrants, etc. in their native language, and to all children from poor families. This issue is very complex, and solutions at the national levels can be found in line with international norms and the legal framework. Each State should adopt a country-specific approach in terms of its educational system, bearing in mind the international legal framework it accepted.

National level normative setting

18. The members of the Joint Expert Group discussed the constitutional and legal bases of the right to education and language of instruction. Mr. Kishore Singh, Secretary of the Joint Expert Group, presented the document prepared by the Secretariat, illustrating a diverse range of experiences and approaches from different countries in a comparative perspective, covering all the world's regions, so that

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[9] A/HRC/10/11/Add.1, para. 16. See also paragraph 58 which reads: "States should provide adequate opportunities to persons belonging to minorities to learn their mother tongue or to learn through the medium of the mother tongue, alternatives which should not be understood as mutually exclusive. Specific forms of such opportunities should be chosen in consultation with persons belonging to minorities and taking into account their freely expressed wishes."

[10] Ibid., para. 59.

issues can be examined based on a broad spectrum.[11] Such an analysis was considered useful in throwing light on the normative setting at the national level and the extent to which this reflects international obligations and political commitments resulting from international instruments. Based on this document, the members of the Joint Expert Group examined several essential questions from a legal perspective, in particular how the national legal systems — constitutions and laws — reflect the "legal framework". In this respect, they also took note of the recent evolution of national legislation in this field (India, Peru, and Cameroon).[12]

19. *Mother Tongue*: The members of the Joint Expert Group reflected on some issues related to mother tongue obstacles encountered in some countries, such as the situation in Madagascar,[13] where many families are multilingual and, therefore, children do not necessarily have only one mother tongue. Problems also exist in relation to written languages (issue of written and non-written languages). Given the focus of the meeting on the international legal framework and national normative settings, the Joint Expert Group considered that the issue of instruction in mother tongue as a right is complex; it is difficult to concretize it in primary education even. It was considered important that the CR and CESCR develop a common approach in dealing with this question.

20. The Joint Expert Group considered that the recognition of the right to education in the mother tongue for the formative years of a child's education at least is important while at the same time enabling the child to learn the official/national language. In this context, they referred to the Operational Definition of Basic Education, resulting from an earlier recommendation by the Joint Expert Group.[14] The Operational Definition provides that "Basic education is provided in the mother tongue, at least in its initial stages, while respecting the requirements/needs of multilingualism." Such a definition is useful for the monitoring of the right to basic

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[11] For example, imparting education in mother tongue/native languages in relation to official languages, (notably India, Indonesia, Madagascar), bilingual education (Canada, Afghanistan, Cameroon), and multilingual education (India, Canada, Indonesia), right to education of linguistic, cultural, ethnic and religions of minorities (India, South Africa) and endeavour of a small country (Moldova), dichotomy between official (national) language and educational rights of national minorities (Estonia), indigenous people and their right to education in native language/mother tongue (Peru) and providing basic education of Quilambola (Brazil), realizing language rights in a conflict-ridden country (Afghanistan), and evolution towards developing/modernizing national legislation on languages of instruction and right to education (Cameroon, India, Moldova and Peru).

[12] The Joint Expert Group had earlier discussed the theme of the right to education and its foundations in national legal systems (doc. 181 EX/9).

[13] The experience of *Madagascar* was cited where parents prefer their children to learn in English or in French rather than in their mother tongue as education in the Malgasi language can lead to being socially disadvantaged. The approach in *Kenya* was also cited — the first language at school is English even if the mother tongue is Swahili. Besides, Rwanda has adopted a recent policy to make English the official language of instruction.

[14] The Operational Definition of Basic Education was elaborated by the Experts' Consultation on the Operational Definition of Basic Education, organized 17-18 December 2007 at UNESCO HQ. This was in response to the recommendation by the Joint Expert Group for the elaboration of an operational definition of basic education that will be universally accepted and recognized.

education in the context of language of instruction.[15] It was pointed out that in the context of EFA, UNESCO uses the term: "mother tongue-based multilingualism". In this respect, additional emphasis could be given to preschool education in a child's mother tongue, which is an important issue.

21. *Multilingualism*: During discussions on multilingualism, reference was made to the UNESCO Education Position Paper: *Education in a multilingual world* (2003), in particular to the three basic principles, enumerated in it, which were considered to be pertinent in terms of policy formulation:

(a) UNESCO supports mother tongue instruction as a means of improving educational quality by building upon the knowledge and experience of the learners and teachers;

(b) UNESCO supports bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies;

(c) UNESCO supports language as an essential component of intercultural *education* in order to encourage understanding between different population groups and ensure respect for fundamental rights.

22. The Joint Expert Group is of the view that in a globalized world, it is important to promote multilingualism for educational exchange, business, general communication and for the broader EFA strategy. However, there is no international legal framework that requires States to provide multilingual education as part of the right to education. Whereas UNESCO has taken the approach of mother tongue-based multilingual education in the context of EFA, education is needed in CESCR on this subject. The Joint Expert Group recommended that both Committees in seeking to adopt a similar approach when examining the right to education and the issue of languages recommended that a joint workshop/seminar to discuss this issue be organized.

Enforcement and justiciability

23. The members of the Joint Expert Group discussed questions of enforcement and justiciability in relation to the right to education. Mr. Kishore Singh, Secretary of the Joint Expert Group, presented a document containing an analysis of case law and jurisprudence regarding the right to education and language. The members of the Joint Expert Group recognized that the constitution, in case it contains provisions of the right to education, is of fundamental importance in providing a basis for national legislation and for the exercise of the right to education in the mother tongue and multilingual education. Existing laws of several countries demonstrate that this right can be claimed. It seems crucial to pay in-depth attention to a country's constitutional law and jurisprudence as well as decisions and recommendations by quasi-judicial bodies, such as tribunals and national human rights institutions. Judgements by courts have a binding effect and provide insight

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[15] A/HRC/10/11/Add.1, para. 59: "School language regimes for the initial stages of education in State schools should ideally employ the language of the child as the predominant medium of instruction, with a gradual introduction of the State language or dominant local language, if different from that of the child, at a later stage, where possible by bilingual teachers sensitive to the cultural backgrounds of minority children."

into how the national normative setting is interpreted and applied, as well as how education in mother tongue and multicultural education are protected and enforced.

24. It was noted that the document analysing jurisprudence on the right to education and language, prepared by the Secretariat, proved very useful for the discussion on such questions. The Joint Expert Group reviewed cases and decisions by courts in this field in various countries, and acknowledged the need to make known such cases as practical examples for raising greater awareness about how the right to education might be claimed as persuasive authority in various countries, and promoting its enforcement and justiciability. The court cases are important as they show how the international legal framework is enforced at the national level. The importance of quasi-judicial mechanisms and of ombudspersons, where they exist, was also recognized.

Key questions addressed by the Joint Expert Group regarding the Institutional Collaboration between the CR and CESCR

25. In addition to discussion of the issues directly related to the theme of the meeting, the members of the Joint Expert Group reflected on some key questions with regard to further institutional collaboration between the CR and CESCR, and reviewed the monitoring mechanisms and reporting procedures and *modus operandi* of both the CR and CESCR. They emphasized that existing mechanisms in UNESCO and in the United Nations in relation to State reporting on the implementation of the right to education cover language issues and must be made more effective in the spirit of the EFA strategies for promoting mother tongue-based multilingualism. Implementation of existing instruments should facilitate universal access to basic education for achieving EFA. This also highlights the significance of the legal framework.

26. The members of the Joint Expert Group discussed the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and its implications for the collaboration of the CR and CESCR as it provides the legal and quasi-judicial remedies for the protection of economic, social and cultural rights, including the right to education. Once the Optional Protocol enters into force (following the deposit of 10 ratifications), collaboration between the CR[16] and CESCR[17] will gain added significance, as the mandate of both will become more similar in having two main components: (i) monitoring the implementation of instruments; and (ii) examining cases and communications on the violation of the right to education. The adoption of the Optional Protocol is a landmark concerning the protection of the right to education, and one of the first cases might conceivably even relate to languages. The Joint Expert Group recognized the importance of reciprocal exchange of information and interaction between both Committees in the process of examining individual cases and communications in relation to violations of the right to education with a view to avoiding duplication. They expressed concern about potential contradictions between CESCR and the CR with regard to language issues in education and it was suggested they adopt common guidelines. With regard to the examination of cases and

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[16] UNESCO's procedure (104 EX/Decision 3.3) for consideration of communications received by the Organization concerning cases and questions of alleged violations of human rights within UNESCO's fields of competence by the CR covers the right to education.

[17] CESCR is composed of independent experts and its sessions are public, whereas the CR is composed of representatives of member States and its procedure is confidential.

communications[18] by individuals alleging violations of human rights, including the right to education, the CR has a special procedure and long-standing experience in settling cases: the procedure is confidential,[19] and benefits from the Director General's Good Offices and reconciliation procedures, as borne out by a large number of cases settled, including in the field of the right to education. This bears witness to the results UNESCO's procedure yields, and the way it impacts the protection of, inter alia, the right to education.

27. Individuals who consider themselves as victims of violations of their right to education need to understand each procedure to choose either one, and need to be aware of what each Committee (CR and CESCR) does in concrete details. Further cooperation between CESCR and CR is required in this respect.

28. The Joint Expert Group recommended that both CESCR and the CR, respectively, organize information sessions, inviting representatives of the other Committee, in order to gain a better understanding of the CR communications procedures and the procedures under the Optional Protocol. They also recommended that a comparison of both procedures be prepared with a view to showing complementarities and possible areas of cooperation. It would therefore be useful to prepare a document on the monitoring mechanisms of CESCR and the CR, so that these mechanisms are sufficiently well known, in light of the need for complementarity in future. The Joint Expert Group also highlighted the value of organizing a seminar/workshop for this purpose, as mentioned above in paragraph 22.

29. The Joint Expert Group considered it important that the nomination of members of the CR to serve as members on the Joint Expert Group, the need for continuing membership of the Group should be borne in mind. This can be done by selecting one member of the CR Committee who has two years more to serve on the Executive Board and one member who has a period of four years to serve on the Executive Board. It is hoped that regional groups will nominate member States to the CR whose representatives have had previous experience in this field, and it was suggested that a member of the Joint Expert Group from CR should convey this suggestion in writing to the chairperson of the CR.

30. The members of the Joint Expert Group took note of the decision adopted by UNESCO's Executive Board at its 181st session (Decision 181 EX Decision 28) as regards the overall activities undertaken by the Joint Expert Group; they, therefore, emphasized the need and the importance of preparing a document which presents a comprehensive overview of such activities and overall work accomplished by the Joint Expert Group until now. This would be very useful for giving it greater visibility, and would provide insight into how the Joint Expert Group has analysed key issues with a view to more effective monitoring of the right to education.

31. The members of the Joint Expert Group decided to continue to interact with the assistance of the Secretariat concerning the theme to be addressed in its next meeting in May 2010.

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[18] NGOs can address communications to the CR.

[19] The observer from the Permanent Delegation of Portugal to UNESCO made an intervention on the nature and work of the CR, and divergent positions of member States.

Annex IX

A. List of documents before the Committee at its forty-second session

E/C.12/42/1	Draft agenda and programme of work of the fortieth session of the Committee
E/C.12/42/2	Status of ratifications and reporting
E/C.12/1990/4/Rev.1	Rules of procedure of the Committee
E/C.12/2008/2	Revised reporting guidelines
A/62/224	Report of the meeting of chairpersons of the human rights treaty bodies on their 19th meeting
HRI/GEN/1/Rev.8	Compilation of general comments and general recommendations adopted by human rights treaty bodies
HRI/GEN/2/Rev.4	Compilation of guidelines on the form and content of reports to be submitted by States parties
HRI/GEN/3/Rev.2 and Add.1	Compilation of rules of procedure adopted by human rights treaty bodies: note by the Secretariat
A/HRC/6/WG.4/2/Rev.1	Second revised draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
E/C.12/AUS/4	Reports submitted by States parties to the Covenant: fourth periodic report of Australia
E/C.12/BRA/2	Reports submitted by States parties to the Covenant: second periodic report of Brazil
E/C.12/KHM/1	Reports submitted by States parties to the Covenant: initial reports of Cambodia
E/C.12/CYP/5	Reports submitted by States parties to the Covenant: fifth periodic report of Cyprus
E/C.12/GBR/5	Reports submitted by States parties to the Covenant: fifth periodic report of the United Kingdom of Great Britain and Northern Ireland
HRI/CORE/AUS/2007	Core document forming part of the reports of States parties: Australia
HRI/CORE/1/Add.53/Rev.1	Core document forming part of the reports of States parties: Brazil
HRI/CORE/1/Add.94	Core document forming part of the reports of States parties: Cambodia

HRI/CORE/CYP/2007	Core document forming part of the reports of States parties: Cyprus
HRI/CORE/1/Add.62/Rev.1	Core document forming part of the reports of States parties: United Kingdom of Great Britain and Northern Ireland
E/C.12/AUS/Q/4	List of issues to be taken up in connection with the consideration of the fourth periodic report of Australia
E/C.12/BRA/Q/2	List of issues to be taken up in connection with the consideration of the second periodic report of Brazil
E/C.12/KHM/Q/1	List of issues to be taken up in connection with the consideration of the initial report of Cambodia
E/C.12/CYP/Q/5	List of issues to be taken up in connection with the consideration of the fifth periodic report of Cyprus
E/C.12/GBR/Q/5	List of issues to be taken up in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland
E/C.12/AUS/Q/4/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the fourth periodic report of Australia
E/C.12/BRA/Q/2/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second periodic report of Brazil
E/C.12/KHM/Q/1/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the initial report of Cambodia
E/C.12/CYP/Q/5/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the fifth periodic report of Cyprus
E/C.12/GBR/Q/5/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland
E/C.12/1/Add.50	Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Australia
E/C.12/1/Add.87	Concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report of Brazil
E/C.12/1/Add.28	Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Cyprus

E/C.12/1/Add.79	Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland

B. List of documents before the Committee at its forty-third session

E/C.12/43/1	Provisional agenda and draft programme of work of the forty-first session of the Committee
E/C.12/43/2	Status of ratifications and reporting
E/C.12/1990/4/Rev.1	Rules of procedure of the Committee
E/C.12/2008/2	Revised reporting guidelines
A/64/276	Report of 21st meeting of Chairpersons of the human rights treaty bodies on their 7th meeting
HRI/GEN/1/Rev.9 (Volume I and II)	Compilation of general comments and general recommendations adopted by human rights treaty bodies
HRI/GEN/2/Rev.6	Compilation of guidelines on the form and content of reports to be submitted by States parties
HRI/GEN/3/Rev.2/Add.1	Compilation of rules of procedure adopted by human rights treaty bodies: note by the Secretariat
E/C.12/TCD/3	Reports submitted by States parties to the Covenant: third periodic report of Chad
E/C.12/COD/5	Reports submitted by States parties to the Covenant: second to fifth periodic reports of The Democratic Republic of the Congo
E/C.12/KOR/3	Reports submitted by States parties to the Covenant: third periodic report of the Republic of Korea
E/C.12/MDG/2	Reports submitted by States parties to the Covenant: second periodic report of Madagascar
E/C.12/POL/5	Reports submitted by States parties to the Covenant: fifth periodic report of Poland
HRI/CORE/1/Add.88	Core document forming part of the reports of States parties: Chad
E/C.12/1/Add.59	Core document forming part of the reports of States parties: the Republic of Korea
HRI/CORE/POL/2009	Core document forming part of the reports of States parties: Poland

E/C.12/TCD/Q/3/Rev.1	List of issues to be taken up in connection with the consideration of the initial to third periodic reports of Chad
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E/C.12/KOR/Q/3	List of issues to be taken up in connection with the consideration of the third periodic report of the Republic of Korea
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E/C.12/1988/4	Concluding observations of the Committee on Economic, Social and Cultural Rights on the report of The Democratic Republic of the Congo
E/C.12/1/Add.59	Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of the Republic of Korea
E/C.12/1/Add.82	Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Poland

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